REVISITING THE CHANGING NOTION OF RAPE LAWS IN INDIA THROUGH FEMINIST LEGAL METHODS OF 'ASKING THE WOMAN QUESTION, 'FEMINIST PRACTICAL REASONING' AND 'CONSCIOUSNESS RAISING'

Ruchi Singh[*]

Guru Prakash[**]

ABSTRACT

Feminist legal Methods are important because it affects how one perceives the potential for legal practise and reform from a women's perspective. The classic foundational essay "Feminist Legal Methods" by Katherine Bartlett critically assess the nature and value of feminist legal methods and its applicability in legal context. The author aims to trace the changing notion of Rape Laws in India using the three 'feminist legal methods' of Bartlett, namely 'Asking the Woman Question,' 'feminist practical reasoning,' and 'awareness-raising' thereby arguing that the theory of knowledge might be used as a starting point for challenging the law's legitimacy and underlying assumptions. The article shall also analyse the progression of the concept of 'consent as defence' by examining the famous cases which led to the transformation of rape laws in India and conclude the usefulness and effectiveness of 'asking the Women's question' while adjudication or legislating upon women matters.

Keywords: *Feminist Legal Methods, Rape Laws, Women's Question, Feminist Practical Reasoning, Consciousness Raising*

I. Introduction

THE SOCIALISED gender roles with patriarchal origins, gender stereotypes, and the power dynamics that follow are some of the structural reasons of violence against women and based probably in the biological difference between men and women. The body of a woman has been a centre of all existential and creational activities be it child birth, child nurturing, care work, love affection or sexual attraction. Even after centuries of human existence the basics of the need and interpretation of a women's body has not changed much. She is perceived primarily

[*] Assistant Professor, Faculty of Law, Patna University, Patna.

[**] Assistant Professor, Faculty of Law, Patna University, Patna.

as a physical object[1], apart from her as a person.[2] The sexual stratification of social control has been a tool in the hands of the society to prohibit her from exercising her free will or natural instincts and choices.[3] The structurally differentiated processes of social control have a sexually stratified inverse relationship, with women being more frequently the instruments and objects of informal social controls and men being more frequently the instruments and objects of formal social controls.[4]

Simone de Beauvoir, a 20th-century socialist feminist, explains a form of existential history of a woman's life: a description of how a woman's attitude toward her body and bodily functions changes over time, and how society influences this attitude. [5] The site of this ambiguity is a woman's body, which she can both employ as a vehicle for her liberation and feel constrained by. Free will or free consent for participation in a sexual interaction can also add to this liberation. There is no absolute truth to the matter, it all depends on how much a woman sees herself as a free individual rather than a target of society's gaze.[6] The mere concept of 'woman,' according to de Beauvoir, is a male concept, and men define what it means to be a woman[7] So in a way we can say that the laws which governs the behaviour of society towards them has also been shaped by the patriarchal notions surrounding the notion of 'being a woman'. Even in conceptualizing the status quo of consent under the Indian Penal Code it took more than a century. The notion of women's free choice to participate or refuse to participate in a sexual interaction has shaped gradually with social transformation, otherwise every amendment related to rape laws in Indian Penal Code (herein after called as 'IPC') was to brighten the nation after a dark night horror story full of existential battles voicing out the women's question left out of consideration because of the law putting a high premium on male deductive reasoning and fixity of rules.

[1] Barbara L. Fredrickson and Tomi-Ann Roberts, "OBJECTIFICATION THEORY," 21 *Psychology of Women Quarterly* 173–206 (1997).
[2] Dawn M. Szymanski, Lauren B. Moffitt, Erika R. Carr, "Sexual Objectification of Women: Advances to Theory and Research", 39(1) *TCP* 6-38 (2011).
[3] John Hagan, John H. Simpson and A. R. Gillis, "The Sexual Stratification of Social Control: A Gender-Based Perspective on Crime and Delinquency" 30(1) *BJS* 25-38 (1979)
[4] *Ibid.*
[5] Simone de Beauvoir, *The Second Sex* (Vintage Classics, England (London) 2015)
[6] Generally for existentialists, one is not born anything, everything we are is the result of our choices, as we build ourselves out of our own resources and those which society gives us. We don't only create our own values, we create ourselves.
[7] *Supra* note 5.

1.1 Understanding the legal and social notion of consent

Most commonly, the concept of consent serves as the foundation for both societal and legal understandings of rape. By giving your approval, you are disproving a presumption about what is permissible and what is not. In the majority of situations, there is a presumption that one does not have access to and may not utilise another person's body, possessions, private information, or other aspects of his or her personal domain. However, this presumption is overturned when (and as long as) the other agrees to such access. Thus, consent modifies the distribution of rights and responsibilities among two or more people. The issue therefore becomes what constitutes consent, presuming for the moment that rape occurs in sexual interactions where consent is absent. Women's sexual consent has frequently been interpreted quite broadly, as merely the lack of opposition or refusal. Feminists have attacked this perspective because, among other unfavourable implications, it considers even unconscious women to be consenting.[8]

The conceptualization of fairness and justifiability of consent as a defence under the penal laws can be validated only on the touchstone of the grundnorm. If the conceptualization of consent under penal laws is lopsided or favours one binary gender more than the other then its inevitably against the constitutional mandate of gender equality and dignity guaranteed to its female citizens. It's indubitably clear that the Constitution guarantees fundamental freedoms to women[9] and if the law presumes anything without subjective unequivocal clarity from the side of the victim it would completely abrogate the constitutional promise extended to the females. Article 51A (e)[10] provides that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women. In fact, the Preamble to the Constitution guarantees social, economic and political justice which would include gender justice and equality of status that would again reinforce the theory of equality, while fraternity enjoins citizens to treat each other with respect and dignity, regardless of gender.[11] Gender Justice is also a subject of India's obligations under International Conventions and sustainable development goals of the International comity of nations.[12] *"Woman is the companion of man, gifted with equal mental*

[8] Alex Sharpe, *Sexual Intimacy and Gender Identity 'Fraud': Reframing the Legal and Ethical Debate* (Routledge 5th edn, 2018). *Available at* https://doi.org/10.4324/9781315144955 (last visited on November 9 2022)
[9] The Constitution of India: Arts. 14, 15(1), 15(3), 21, 23, 24.

[10] The Constitution of India, Arts. 51A (e).
[11] Government of India, "Report of the Committee on Amendments to Criminal Law" (Ministry of Home Affairs, 2013).
[12] United Nation Sustainable Development Goals, Goal 5: Achieve gender equality and empower all women and girls.

capacities. She has the right to participate in the minutest details in the activities of man, and she has an equal right of freedom and liberty with him.[13]

The issue of whether mens rea, or "guilty mind," should be used in rape cases and, if so, how that criterion should be construed, further complicates the discussion. In the broadest sense, a mens rea requirement means that the prosecution must demonstrate both the occurrence of non-consensual sex as well as the man's mental state with respect to the woman's lack of agreement.[14]What constitutes mens rea, the mental state that justifies rape is up for debate. The authors here would like that 'Consent' given by a women if proved absolves the accused of all the criminal liability under Law and decriminalises mens rea therefore in rape cases consent has to be more seriously construed than the normal notion of consent because consensual participation in sexual interaction by a women would be interpreted as an act of love and affection but vice versa shall be construed as a heinous criminal act. Here consent if given freely and wilfully by a women becomes an emblem of women empowerment but if any forced or coerced consent is proved as normal and wilful shall not only act as a defence for the accused and free him from penal liability but shall also demean the constitutional notion of liberty and equality for women, and notion of freedom of choice and free consent as lifelines of women empowerment shall die a thousand death.

There is no doubt about the fact that rape cases involve a lot of stigma for the accused but at the same time the real picture of India and the practice of the society had been always about victim blaming and in distorting the basic dignity of women.[15] This kind of scenario also brings about the issues of intersectionality which is generally missing in determining consent of women during a process of adjudication or objective law making for setting standard tests for formulating consent. Every state population also can be divided into two broad categories, one which comprises those who are affluent and who have access to the Constitution and its machinery, and the other comprising those who live in the silent domination of the superior

[13] This was said by Mahatma Gandhi in his speech given at the Morarji Gokhale Hall on 20th February, 1918.
[14] Keith Burgess-Jackson "Rape and Persuasive Definition." 25 *Canadian Journal of Philosophy* 415–54 (1995):
[15] Quoting few of the statements given by so called leaders of the Country after the Nirbhaya Rape Case incident on 16th December 2012 which shows the terrible mindset of people on heinous crime such as rape. Shri Anisur Rahman of the Communist Party of India (Marxist) said: "We have told the chief minister in the assembly that the government will pay money to compensate rape victims. What is your fee? If you are raped, what will be your fee"? Shri Om Prakash Chautala of INLD said "We should learn from the past... specially in Mughal era, people used to marry their girls to save them from Mughal atrocities and currently a similar situation is arising in the state. I think that's the reason khap has taken such a decision and I support it."Shri Sri Prakash Jaiswal of Congress said: "New victory and a new marriage have their own significance. The memory of your victory fades with time, the same way one's wife becomes old and loses her charm"

will of tradition, customs and practices which are derogatory to women. The victim and the accused belong which category and what would be their subjective issues of intersectionality would also play important role in solving the puzzle of consent as defence in any particular case. All these issues and concerns raised under the 'constitutional notion of consent' by the authors shall be better contextualized by an introduction and understanding of the feminist legal methods.

II. Understanding Feminist Legal Methods of Bartlett

This part of the article shall explore the legal methods as discussed by Bartlett[16].

2.1 Importance of methods in legal reasoning

Methodological issues, according to Bartlett, are important because they shape one's perception of the possibilities for legal practise and reform. She contends that it is critical to consider how certain aspects of existing legal doctrine discriminate against women and other minorities, and she rejects the distinction between so-called male reasoning, which appears to be abstract and deductive, and so-called female reasoning, which is concrete and contextualised.[17]

Bartlett takes a philosophical approach, arguing that Epistemology (or theory of knowledge) is a discipline of philosophy concerned with the nature and scope of knowledge and gives a good start to analyse the law's legitimacy and assumptions. Using epistemology in legal reasoning, would ask us to raise certain questions such as: What is knowledge? Where do we acquire our information? What evidence do we have to support our beliefs? What are our perceptions of the world around us? Do we have any idea what's going on?[18] In approaching these questions from an epistemological viewpoint, we must ask oneself: can we ever recognise oppression that we ourselves have not experienced? While examining these issues from an epistemic point of view. In her argument Bartlett is convincing that feminism's core beliefs speak the truth for many people, not just a privileged few. There are additional challenging and crucial epistemological concerns surrounding consent and that discussions of consent frequently confuse these matters with metaphysical ones. People who support so-called "affirmative consent" viewpoints are occasionally accused of giving a novel, divisive perspective on what

[16] Bartlett's work had been one of the first works to explore these questions of feminist legal methods in a comprehensive way. Katherine T Bartlett, "Feminist Legal Methods," 103(4) *HRL*. 829-888 (1990).
[17] Ibid
[18] *Supra* note 19, pg- 832-833

consent entails, or even believe themselves to be doing so. The proper approach to understand "affirmative consent" is as a view about what is necessary before one can credibly assume that another person has consented, from an epistemological perspective.

2.2 Lawyer's perspective v a feminist lawyer's perspective

In settling the question as to what would make a feminist lawyer different from any other lawyer Bartlett argues that both of them will approach law in the same way. They will evaluate the facts of a legal issue, determine which legal principles should be applied, and finally apply the selected principles to the circumstances. A feminist lawyer in addition to that, might also use "the woman question" and feminist practical reasoning.[19] Using 'feminists' as an umbrella term does not mean all feminists share the same approaches or ideas about reforming the existing legal system.[20] Instead it may be argued that even though they have different approaches, there are three 'central commitments' that they may share on political, substantive and methodological levels.[21] The author's research entails around the presumption that in rape cases if feminist lawyering is used it shall make the existence and non-existence of consent in a particular case more clear rather than just from an epistemological perspective.

2.3 Feminist Legal Methods

Three important approaches used by Bartlett in feminist legal theory, namely "asking the woman question," "feminist practical reasoning," and "consciousness-raising," will be briefly covered in this section.

a. Asking the Woman Question

The "woman question" in law, according to Bartlett, will require us to investigate if women have been left out of consideration, and if so, how might the omission be corrected, and what difference would it make to the conclusion if it were corrected. In this context the authors shall examine the development of rape laws in India by asking the 'woman question' to critically analyse the famous cases which led to the Criminal Law Amendments in the next part of the

[19] *Supra* note 19, pg- 834-837

[20] Deborah L. Rhode, "Feminist Critical Theories" 42 *SLR* 617-619, (1990). see also, Nancy Levit and Robert R. M. Verchick, "*Feminist Legal Theory: A Primer*'' 15-88 (New York University Press, 2006); for historical evolution of and changing 'trends' in legal feminism, see Martha L. A. Fineman, "Feminist Theory and Law'' 18 *HJLPP* 349 (1995); Katherine T. Bartlett, "Feminist Legal Scholarship: A History Through the Lens of the California Law Review'', 100 *CLR* 381 (2012).

[21] On a political level, feminists with a variety of theoretical orientations strive for "equality between men and women." The goal of feminist critical frameworks that make "gender a focus of analysis" is to "reconstitute legal processes that have excluded, undervalued, or weakened women's concerns" on a substantive level. These critical frameworks aim to describe "the world in ways that relate to women's experience" and "identify the basic social diffrences essential for true equality between the sexes" on a methodological level.

article. 'Asking the woman question' in law, means analysing how the law fails to take into account the experiences and values that appear to be more characteristic of women than men and how current legal norms and ideas may harm women.[22] By asking the 'woman question' Bartlett isn't proposing arbitrary or unjustifiable limits, such as mandating a judge or decision maker to rule in favour of all female applicants, considering it a better way to approach the law. In essence, a feminist or a feminist attorney will treat the law similarly to every other attorney. They will assess the relevant facts in a legal issue or dispute, pinpoint their key components, choose the applicable legal principles, and then apply the chosen principles to the relevant facts. But Bartlett contends that a feminist lawyer might also use feminist practical reasoning and "the woman issue." According to Bartlett, the "woman issue" in law requires us to investigate if women have been overlooked and, if they have, how the omission might be corrected and what difference it might make to the decision. By asking the 'woman question', a justified relationship to legal substance is created. The judge merely needs to look for gender bias and "reach a justifiable judgement in the case in light of that bias." The application of the "woman question" tries to highlight gender-based disadvantage.[23] Bartlett is not advocating harsh or unreasonable restrictions, such as mandating that a judge or decision maker rule in favour of all female applicants, as a preferable way to approach the law. Bartlett contends, however, that by posing the "woman issue," a reasonable connection to a legal substance is made. Simply looking for gender bias is sufficient for the judge, who must then "reach a decision in the matter that is defensible in light of that bias." The "woman question" application aims to shed light on gender-based disadvantage. Unless it is determined that the law is not gender-neutral, asking these questions has no real repercussions. The three essential features of asking the woman question in this regard as are (i) to identify tacit discriminatory nature of law against women implicit in seemingly neutral and objective legal rules and practises, (ii) to find out how the law excludes subjective experiences and values of women, and (iii) to emphasize upon application of legal rules that do not perpetuate women's subordination in law.[24]

a. Feminist Practical Reasoning

Feminist Practical Reasoning is the second step in the feminist legal approaches process. Bartlett sums up feminist practical reasoning as extending traditional ideas of legal relevance

[22] *Supra* note 19, pg- 835
[23] Lydia A. Cloughtery, ''Feminist Legal Methods and the First Amendment Defense to Sexual Harassment'' 75 *NLR* 1-2 (1996)
[24] *Ibid*

in order to make legal decision making more sensitive to the elements of a case, which have been largely ignored or disregarded in a legal doctrine. "Accordingly, feminist practical reasoning deems relevant facts related to the women question, require more deliberate attention than other facts. Bartlett uses the example of a marital rape case[25] and suggests that in applying feminist legal reasoning, she may determine that it is relevant that the wife did not want sexual relations on the day of the alleged rape by her husband.[26] In this case the Supreme Court rejected the marital-exemption defence against consent of the victim by calling into questions surrounding the history of exemption clause and all its social and legal context. This case set an exemplary use of the model of 'feminist practical reasoning' according to Bartlett. Thus the authors settle on the argument that feminist rationality acknowledges greater diversity in human experience, thus opening up the distribution of power, and very convincingly, second Bartlett's suggestion that by applying feminist practical reasoning to a case, we ensure the continued expansion of the 'woman perspective'.

b. Consciousness-Raising

Consciousness-raising is the third method of Bartlett's feminist legal methods and the process of consciousness-raising, according to Bartlett, also provides for examining the validity of recognised legal ideas from the viewpoints of women who are directly affected by such legal principles. She claims that it is a collaborative and participatory process of expressing and sharing a woman's experiences with others.[27] This third method of Bartlett in a way sums up the above two methods and can be said to the most important of the three methods[28]. For instance, as Fisher points out, knowledge which arises from consciousness-raising helps in understanding how legal practices affect women and this knowledge is also a part of the process of feminist practical reasoning. Bartlett finally sums up all her methods of feminist lawyering with the help of 'Theory of positionality'. Positionality is a perspective that makes sense of a variety of seemingly contradictory feminist truths. Positionality remains a concept of knowing based on experience, according to the viewpoint of epistemology. Positionality, on the other hand, is distinguished by its rejection of "perfectibility, externality, or objectivity of truth" in favour of a conception of truth as positioned and incomplete. The concept is that the reality is

[25] *State v Smith*, (85 N.J. 193, 426 A.2d 38)

[26] Id. Facts of the case are that the defendant and his wife resided in different places when the alleged event occurred on October 1, 1975. The State charges defendant of entering into his wife's apartment at 2:30 a.m., threatening, choking, and punching her once inside. He repeatedly beat her, forced her to have sexual intercourse, and perpetrated several other crimes against her person, according to the State, over a period of several hours.

[27] *Supra* note 19, pg- 837

[28] Linda E. Fisher, ''I Know It When I see It, or What Makes Scholarship Feminist: A Cautionary Tale'' 12 *CJGL* 439-442 (2003); see also Bartlett, supra note 19, pg 405-406.

skewed and that no one can comprehend it except from a restricted perspective. To put it another way, no one's truth can be considered complete or final, and the only way to expand our knowledge is to broaden our narrow perspective.

If all the legal methods of Bartlett's are taken together and interpreted harmoniously it can be explained that, practical reasoning favours less detailed rules or standards because they provide individuals more freedom to conduct individual analyses. Bartlett only says that "rules give room for fresh insights and perspectives formed in new settings," not that practical reasoning in law should reject rules. On the other hand, practical reasoning requires more than just "some reason" for a decision; there must be an actual reason, in contrast to the legal realist position that claims that "laws enable a limited range of manipulation." The fact that there are "laws" in place does not absolve the judge or other decision-maker of accountability; rather, it just indicates that they have an option, and they must make that choice and then support it. Bartlett examines a variety of viewpoints that have evolved within feminist thought as she continues to explore feminist explanations of what it means to be right in the law. She claims that feminists take a rational and empirical stance that assumes the law is not objective and that it may be made more objective by identifying and correcting false assumptions. For instance, Bartlett cites positionality as forcing feminists who disagree with restrictive abortion laws to "make an effort to understand those whose views about the sanctity of potential human life are offended by the assertion of women's unlimited right to choose an abortion" or in the case of feminists who argue for joint custody during divorce, positionality compels appreciation of the desire by some fathers to be responsible, co-equal par parents."

In a way Bartlett suggests that we cannot transcend our perspective by just defining what our perspective is but surely we can improve our perspective[29] about the subject matter in concern by extending our imaginations, or imagining ourselves in the position of the parties in the case.

The authors here would like to borrow these theories of Bartlett and test the judgments of the famous rape cases in India which motivated the need for changes and amendments in rape laws in India and contextualise the same in the next part of the article after briefly but critically looking at the evolution of rape laws in India.

[29] *Supra* note 19, pg- 885

III. Understanding rape from an Indian Perspective for applying Bartlett's Legal Method

All crimes are crimes against society but sexual crime against women is so much more about values, ethics, and honour of the family and character of the victim. This statement is not made on reasons or presumed but an analysis of the evolution and development of rape laws not only in India but in the entire world affirms this. Talking specifically about India British knew little about India till 19th Century and it can well be said that laws made by them for India were all based on their own experiences and the english common laws or Indian social practices. Robbery, murder and treason could be clearly called crimes but rape and sexual violence was more about violation of a person's body or of his freedom versus social values.[30]

Even today if a man's car is stolen he is not disgraced but of a man's grown-up daughter is abducted is in India at any rate dishonoured. It is assumed that in some way the girl must have 'asked' to be abducted or violated and here begins the story of subjectively defining consent and conceptualizing it as a defence.

3.1 The idea behind trivializing Rape under English Law and Common Law

Under British Common Law and Statute Law on abduction, rape, and kidnapping, abduction[31] appears to have been seen as an injury to the family whereas rape appears to have been regarded as an injury to the lady. This was undoubtedly one of the reasons why the woman's reputation was scrutinised in rape cases: if she wasn't 'of excellent fame,' she had nothing to lose in terms of honour. The concept was to defend man's honour or property rights, whether in land or in other people.[32]

Family honour was apparently profoundly implicated in the offence of abduction in English Law, since no action for abduction appears to have been taken if the woman was past the age of sixteen. Also, it appears that any right of action, if any, belonged to the woman's kinsmen, not to her.[33]The crime which we call rape had in very old days been hardly severed from that which we call abduction; if it had wronged the woman, it had wronged her family too, even if

[30] Frederick Pollock and Frederic William Maitland, *The History of English Law Before The Time Of Edward I*, 490 (Cambridge University Press 2nd Edn 1952).
[31] Offences Against The Person Act, 1861.
[32] *Supra* note 34, Clause 48, under this clause whoever would be convicted of the crime of Rape was guilty of Felony, and upon conviction, shall be subject to Penal Servitude at the Court's discretion. In India The Indian Penal Code had Clause 359 and 360 on Rape at that time as IPC was enacted in 1860.
[33] *Supra* note 34, Clause 55. With the enactment of Offences against the Person Act, 1861, under clause 55, abduction of girls above the age of 16 held the accused guilty of a misdemeanour which is mere a minor wrong.

the girl out of her consent had eloped with the accused her kinsmen felt seriously wronged[34]. Therefore we can say that the notion of what the women feels or want or notions that shall lead to a valid consent were almost out of question. Crime of rape was trivialised, often negated by the english legal system.[35] The offender, could 'redeem' him by accepting him as her husband (marriage). The offence of ravishing a girl 'within age', that is under twelve years of age, with or without her consent, and of ravishing any other woman against her will, was reduced to trespass.[36] Hence the argument of consent had no implicit legitimacy in penalizing the crime of rape.

3.2 IPC and India

In 1834 Thomas Macaulay came to India as the first law member of the Supreme Council, appointed under the Charter of 1833[37].The state of law in British India was perplexing; hindu and muslim law were not uniformly applied across the three Presidencies, and native laws were sometimes difficult to determine or impossible to administer. The Indian Law Commission, led by Macaulay, developed the Penal Code which had two Clauses 359 and 360 dedicated to the crime of rape. The first of these established the offences, while the second established the penalty.[38] The concept of consent was first codified and from here and the legal connotations used were ‘without her consent’ and ‘against her will’. After more than a century and half, the Section 375 of the IPC[39] today only differs slightly from Clause 359. The difference being added in the explanations and exceptions to the section and the scope of the term rape now is much wider than what it was in clause 359.

[34] *Supra* note 29.
[35] *Supra* note 34, Clauses 51-54.
[36] Julia Rudolph, “Rape and Resistance: Women and Consent in Seventeenth-Century English Legal and Political Thought” 39 (2) *JBS* 157-184 (2000).
[37] The Charter of 1833 empowered the government to make laws for British India, created the Law Commission for that purpose, with due respect to native customs and usages.
[38] 359 reads: A man is said to commit rape who, except in the cases hereinafter except, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions: First against her will. Secondly: Without her consent while she is insensible. Thirdly: With her consent when her consent has been obtained by putting her in fear of death or of hurt. Fourthly: With her consent, when the man knows her consent is given because she believes that he is a different man to whom she is, or believes herself to be married. Fifthly: With or without her consent when she is under nine years of age. Exception: Sexual intercourse by a man with his wife is in no case rape.
[39] A man is said to commit "rape" if he penetrates his penis, inserts, to any extent, any object, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or manipulates any part of the body of a woman so as to cause penetration or applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person. This scope of the term was not there initially till the Criminal Law (Amendment) Act, 2006, post *Sakshi v Union of India* case which was decided by the Supreme Court in 2004.

3.3 The Question of Character and Sexual Ethics in the Indian Penal Code

The Law Commission of India[40] has often advised against offending Indian sensitivities by breaking their moral rules. It is considered that Indian morality is based on the values held by upper-class men, and hence the crime of rape has always been linked to a person's character. Because of the society's interpretation, every sexual offence against a woman character is scrutinised by the law. It assumes that a licentious woman must have solicited or 'asked for difficulty,' and that she would not refuse to agree because of her promiscuity. The woman's testimony is crucial in proving a rape allegation, but Section 375 of the Penal Code did not include corroboration until it was amended. Presently under section 114A of Indian Evidence Act there is a Presumption as to absence of consent in certain prosecutions for rape if the women says so.[41]

3.4 Ingredients of Rape and analysis of consent

Meaning of the term rape is violation with violence of the private person of a woman. It is derived from the Latin term *rapere,* which mean 'to seize'. Thus rape literally means a forcible seizure. It has two ingredients namely a. Sexual intercourse by a man with a woman. b. The sexual intercourse must be under the circumstances falling under any of the seven clauses of section 375.[42] The first two circumstances clearly mention that for the offender to be absolved of any criminal liability will or consent of the victim must be proved. The other five circumstances have varied causes for the victim to consent and attracts more probability of being easily proved or disproved than the previous two. In case of the first clause which is 'against her will', the term will signifies the faculty of reasoning power of mind that determines whether to do an act or not. There is a fine distinction between an acts done 'against the will' and 'an act done without consent.' Consent as stipulated under section 90 of the IPC[43] as "free

[40] Law Commission of India, "172th Report Review of rape Laws" (March, 2000).

[41] In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Indian Penal Code, (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

[42] A man is said to commit "rape" if he sexually interacts with a woman under the circumstances innumerate in Section 375 which are: against her will, without her consent, with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt, with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married, with her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent, with or without her consent, when she is under eighteen years of age, when she is unable to communicate consent.

[43] It stipulates that consent must be provided free of any misunderstanding of facts, fear, or damage, unsoundness of mind or intoxication.

and intelligent consent provided without fear or deception and with full awareness of the act to which the consent is given."

3.5 Will, Consent and Submission: different variables of the same equation

So we can say that 'against the will' is the superset of which 'without the consent' is the subset. Or we can say that every act 'without the consent' is not 'against the will.' Therefore the term against her will applies where the woman is in possession of her senses and therefore, capable of consenting., The Supreme Court explained that the expression 'against her will' would ordinarily mean that the intercourse was done by a man with a woman despite her resistance and opposition.[44] Here these interpretation by the Supreme Court of 'resistance and opposition' or 'use of force' by the woman was later cleared by the Criminal Law Amendment Acts 2013.[45] A woman is said to consent only when she freely agrees to submit herself, while in free and unconstrained possession of her physical and moral power to act in a manner she wanted. [46]Consent may be either expressed or implied depending upon the nature and circumstances of the case. According to explanation 2 of section 375 of the IPC[47]Consent as it means today must be an unequivocal or uncontested voluntary agreement from the side of the woman either expressed or communicated to the man by words, gestures or any form of verbal or non-verbal communication, thereby making her intention and willingness to participate in the sexual activity very clear at the face of it.[48] However, there is a difference between consent and submission as well. It can be summarized that consent under law is not an act of helpless surrender at the face of unavoidable compulsions. Any act of helpless resignation because of coercion, quiescence, non-resistance, or passively submitting the body, cannot be termed 'consent' as defined in law if the volitional capacity is obscured by fear or vitiated by pressure. Consent on a woman's side as a defence to a rape charge involves voluntary involvement, not only after exercising intelligence, based on knowledge, of the importance of the act and the moral values attached to it but also after having freely exercised a choice between resistance and consent. It is not consent if she submits her body under the effect of fear or panic.[49] Therefore we can say that every consent is submission but every submission is not consent.[50]

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[44] *State of Uttar Pradesh* v. *Chottey Lal*, Criminal Appeal No. 769 OF 2006

[45] Proviso to Explanation 2 of Section 375 was added by Criminal Law (Amendment) Act, 2013 (Act13 of 2013). (Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity).

[46] *Ibid.*

[47] Explanation 2 of Section 375 was added by Criminal Law (Amendment) Act, 2006 (Act 13 of 2006).

[48] *Supra* note 48

[49]*Rao Harnam Singh, Sheoji Singh* v. *State*, AIR 1958 P H 123

[50]*Ibid.*

Also consent accorded under a misconception[51], unsoundness of mind or under influence of intoxication etc. will not act as defence against the accused.[52]

The law in its gradual development seems to have actually applied feminist legal methods to reach to this concept of consent as it is today but the authors still feel that had these legal methods be applied long before we need not wait for cases like Sakshi's[53], Mathura's[54], Nirbhaya's[55] or Kathua's[56]. Also the decisions in Sakshi's case and Mathura gang rape case would not have suffered the flaws of the existing laws. This argument shall be advanced in the next part of the article where the authors shall revisit the need of the Criminal Law Amendments with the lens of feminist legal methods of Bartlett. We need amendments in laws only because the previous version of the objective norm lacks the competence to deal with any new kind of unimaginable situation of crisis. The entire jurisprudence of amendment in any law rests on the phenomenon on incompetency of the status quo of the legal system.

IV. Applying Bartlett's Legal Methods to Rape cases in India

This part of the article shall revisit the famous cases in India which initiated the need of amendments in rape laws, and post which the Criminal Law Amendment Acts were passed. The researches would look at the cases using Bartlett's method to check if the decision could have been different in those cases. Here for the purpose of clarity and to contextualise the proposed objective of the article four cases have been picked by the authors after which Rape Laws underwent major changes. The article shall look at the parts of the judgement where the feminist legal methods if applied could have had a different picture.

4.1 Mathura Gang Rape Case[57]

Over the period of time since 1860 when we got our first legislated law against the crime of rape we have seen several amendment. The criminal legislation pertaining to rape and sexual assault cases remained untouched for nearly a century after 1860, until the episode of the Mathura custodial rape case which was a turning point in Law. Mathura, a young Adivasi girl,

[51] *Bhupinder Singh* v. *Union Territory of Chandigarh*, (1997) 117 PLR 334
[52] Clause (5) of section 375 IPC was added vide the Criminal Law (Amendment) Act of 1983. *Tulshidas Kanolkar* v. *State of Goa*
[53] *Sakshi* v. *Union of India*, (2004) 5 SCC 546
[54] *Tukaram* v. *State of Maharshtra*, 1979 AIR 185
[55] *Mukesh* v. *State (NCT of Delhi)* [(2017) 6 SCC 1], popularly called as the "Nirbhaya Judgment"
[56] *Mohd. Akhtar* v. *The State of Jammu And Kashmir*, 2018 (8) SCJ 265.
[57] *Supra* note 57.

was reportedly raped by officers in Maharashtra's Desai Gunj police station on March 26, 1972. Following the trial, the session court determined that she had sexual intercourse while at the police station, but that rape had not been shown and that she was used to habitual intercourse.[58] The High Court overturned the acquittal of both police officers, which had been granted by the session court. The Supreme Court overruled the High Court's decision, stating that "the intercourse in question is not proven to be unlawful. As there was no mark of injury on the victim's body, and there was no use of force or resistance from her side, also she satisfied the appellant's lust to the fullest therefore a case of passive submission also can't be made."[59] The contentious decision spurred nationwide protests calling for changes to current rape laws.[60]

Here in this case if the three methods of Bartlett are applied what we would have from Supreme Court is the reiteration of High Court's decision in the case. 'Asking the woman question' if applied to this case shall have certain claims as questions such as "what assumptions are made by law (or practice or analysis) about those whom it affects? Whose point of view do these assumptions reflect? Whose interests are invisible or peripheral? How excluded viewpoints might be identified and taken into account. In the case Mathura's viewpoint was rather ignored and the perspective of passive submission as the society or the judges in the case perceived was highlighted through the judgement.

Here in this case if Bartlett's second method of 'feminist practical reasoning' would have been applied it would have acted as the polar opposite of deductive reasoning in the case which led to the remark that no injury on private part of the victim itself explains that there was no resistance from the victim's side which in a way confirms consent. Feminist practical reasoning if applied would have deemed focus on facts such as 'why Mathura did not resist or why did she submit passively' as more relevant and related to woman question. Which was surely not done by the Supreme Court. Bartlett's third method of 'consciousness raising' could have helped the Court to access how far the legal framework surrounding the notion of will, consent and submission under existing rape laws legitimate or cover all intersectional experiences of woman. The authors settle their claim by asserting that had feminist legal methods be applied to conclude the judgment it would have given a new dimension to the claims of passive

[58] *Supra* note 57, para.4
[59] *Supra* note 57, para. 5
[60] In the IPC, Section 228A was added which makes it punishable to disclose the identity of the victim of certain offences including rape. The Criminal Law (Second Amendment) Act of 1983 was the result of this. In the Indian Evidence Act of 1872, a new Section 114A was included, which implied the absence of consent in some rape proceedings if the victim states so. This was applied to the situation in cases of custodial rape.

submission and consent under Rape Laws instead of nationwide protest and outrage against the judgment.

4.2 *Sakshi* v. *Union of India*[61]

This case is not related to consent directly but the decision of this case has left room for major changes in the Criminal Laws, which led to the Criminal Law Amendment Act 2006. The authors here are revisiting the decision of the case to examine it with the lens of Bartlett's legal methods in order to find out what could be the scope for the judge to decide the case otherwise at that point of time when the scope of the definition of Rape was very narrow. In this case an NGO named Sakshi had filed a public interest litigation to the Supreme Court to expand the meaning of the term rape so as to include all kinds of penetration by force.[62] The court rejected to put any other kind of penetrations in the scope of Section 375, other than forceful vaginal penetration[63]. The Court's ruling was founded on stare decisis, a legal concept that requires courts to follow earlier decisions unless an exceptional circumstance occurs. The court also held that criminal law must be precise and unambiguous. Changing the IPC s. 375 definition of rape would cause uncertainty and ambiguity, and would not be in the best interests of society as a whole. Here if feminist legal methods would have been applied to the case certainly the reasoning of the Court that the case of Sakshi's was not an exceptional or an extraordinary case would be ruled out. Asking the 'woman question' of whether a restrictive interpretation of "penetration" in case of rape defeats the entire intent of the provision of rape and whether penetration of a child with an inanimate object should still qualify as unnatural offence and not rape, complemented with 'feminist practical reasoning' and 'consciousness raising' would have had an impact on the method of interpretation by the judges and of reconsidering the terrible impact of the act on the persona and psychic of the child. Bartlett's legal methods focus on relevant facts related to woman question and in this case it would have raised consciousness towards a teleological interpretation of "rape" taking into account the historical disadvantage faced by a particular group, and in this case a minor child.[64] The use of Bartlett's method could have been to show that the existing restrictive interpretation worsens that disadvantage and hence an interpretation of law solving the problem in the case within the ambit of the power of

[61] *Supra* note 56.
[62]The definition of Rape under Section 375 before Criminal Law Amendment Act 2006 used the word' sexual intercourse', which was interpreted as vaginal intercourse by a man with a woman without her consent. In this case *Sakshi* contended that the existing legislation restricts rape to vaginal penetration exclusively, which is in violation of both the Indian Constitution and India's international obligations under various conventions.
[63] The court relied on the dictionary meaning of the word 'sexual intercourse' as it was not defined anywhere in the IPC, and the dictionary meaning of the word only included vaginal intercourse.
[64] *Supra* note 56, para 9.

judicial review and extraordinary powers of the Supreme Court was possible. Here semblance can be drawn from Bartlett's example of the Marital rape case of *Smith* v *State*[65] which has been refereed by the authors in the previously in the article. Even in Smith's case the law gave marital exemption defence to the accused but the Court did not interpret it so focusing on the 'woman question' in the case. The authors submit their view that similar approach could have been possible in Sakshi's case too.

Another case of Ram Lakhan[66] gives us insight into feminist legal methods where the judge (Badar Durrez Ahmed, J.), interpreted the definition of the term 'beggar' which was missing in the Anti-Beggary laws[67] in question. In this case the petitioner was arrested under the charge of begging and soliciting alms and was locked up in Tihar jail. The learned Metropolitan Magistrate has found him to be a beggar, but when the was appealed to the High Court Justice Ahmed relloked??? at the intent of the Anti –Beggary legislation and classified beggars into four categories though the act merely said that anyone who shall beg or solicit alms shall be arrested under the act. The learned judge said that four categories of people can be said to be beggars, one who is downright lazy and hence begs, one who is a drug addict or alcoholic, anyone who is forced into beggary, and the fourth category could be of helpless, hopeless and starving person who has no other means to survive and hence under duress or necessity have chosen to beg for surviving. The petitioner Ram Lakhan was held to be in the fourth category and hence his case would not qualify under the purpose of the legislation of anti beggary. This case can be sited as an example similar to the example of *Smith* v *State* as given by Bartlett. Therefore it can be said that applying feminist legal methods in a situation which lacks the coverage of law can help to deviate from the set precedents in order to solve the problem in the case.

4.3 Nirbhaya's Case[68]

The 172nd Law Commission report[69] also recommended to make rape laws gender neutral and stricter. But before the nation could realise the gravity of the crime we had another horrific incident of gang rape and murder on December 16 2012, of another young female led to the passing of the Criminal Law (Amendment) Act in 2013[70] which widened the definition of rape

[65] *Supra* note 28.
[66] *Ram Lakhan* v *State*, 137 (2007) DLT 173.
[67] The Bombay Prevention of Begging Act, 1959 (Bombay Act X of 1960).
[68] *Mukesh* v. *State for NCT of Delhi*, (2017) 6 SCC 1
[69] *Supra* note 43.
[70] Criminal Law (Amendment) Act, 2013 (Act13 of 2013).

and made punishment more stringent. [71] The Nirbhaya case is an example of how common consciousness of the entire nation can bring about transformation in Laws. The Nirbhaya judgement can be said to be the best example of the application of 'feminist practical' reasoning and 'consciousness raising' because the case considered all the claims of the facts which were relevant to the 'woman question'. On this point a part of the recommendation of the Verma Committee[72] can be quoted which highlights the need for 'feminist practical reasoning' and 'consciousness raising', and sums up the need of applicability of the same to improve the criminal justice system in India. The committee[73] wrote that: '*the rape of Nirbhaya and the sacrifice of her life only reinforces that India requires de facto equality, requires freedom from superstition, renunciation of arcane, misogynist traditions and practices which are completely at variance with the Constitution*'. Nirbhaya Judgment was an example of how the process of consciousness-raising, enabled the "evaluation of the validity of established legal concepts" from the viewpoints of women who are directly affected by such legal principles. Bartletts had claimed that articulating a woman's experiences and sharing them with others is an "interactive and collaborative process." The effect of the application of such a process was the Criminal Law Amendment Act, 2013[74] came which created new offences[75] related to experiences of a woman which had been long side-lined and ignored[76]. The act [77]also increased sentencing in most sexual assault cases and provided for the death sentence in exceptional rape cases where the rape causes death of the victim or leaves her in vegetative state.

4.4 *Kathua Rape* Case[78]

The latest amendment in the criminal laws is of 2018 after another heinous rape incident where a gang of men abducted, raped, and killed an eight-year-old girl near Kathua in Jammu and Kashmir. The terrible crime sparked widespread outrage and calls for tougher punishment. This resulted in the passage of the 2018 Act[79], which included the death penalty as a possible punishment for rape of a girl under the age of 12 for the first time; the minimum sentence is 20

[71] The reforms were enacted on the proposal of the Justice J.S. Verma Committee, which was formed to review and recommend changes to the country's criminal legislation.
[72] Government of India, "Report of the committee on amendments to criminal law'' (Ministry of Home Affairs, 2013)
[73] *Ibid*, pg. 16.
[74] Criminal Law (Amendment) Act, 2013 (Act 13 of 2013).
[75] *Ibid*, For example specific offences such as such voyeurism, stalking and use of criminal force on a woman with intent to disrobe her were not there in the IPC before 2013 Amendment.
[76] *Supra* note 77, Secs 354A, B, C, D.
[77] *Supra* note 77, Secs 376A, B, C, D, E, 509
[78] *Supra* note 59.
[79] Criminal Law (Amendment) Act, 2018, (Act 22 OF 2018)

years in prison. In addition, a new provision of the IPC was added to explicitly address rape of a female under the age of 16.

In 2018 we had another amendment in criminal law after another incident of rape In January 2018 where an eight-year-old girl in Rasana village near Kathua in Jammu and Kashmir was abducted, raped and murdered by a group of men. The news of the shocking act led to nationwide protests and calls for harsher punishment. The same kind of situation happened after Sakshi's Case which also had a child victim but the 'woman question' was ignored that time reducing penetration of any inordinate object as 'unnatural offences' and not rape because the definition of rape only included vaginal penetration of the penis. That time Bartlett's method was not applied of 'feminist practical reasoning' but in the 2018 case the Supreme Court answered the issue of child rape by using the feminist legal methods and this resulted in the passage of the Criminal Law (Amendment) Act, 2018. The minimum jail term for rape, which has remained unchanged since the introduction of the IPC in 1860, was increased from seven to 10 years.[80] Though the case of Kathua and Nirbhaya are not about consent directly but refers to many 'women question' being addressed by the Supreme Court through 'feminist practical reasoning and 'consciousness raising'. Therefore the authors have chosen these cases to show how application of feminist legal methods can bring changes in the existing legal system or answer questions which fall out of the scrutiny of the existing legal norms for some or the other reason.

4.5 The recent judicial trends in rape cases in India on the question of consent

Presently the Indian Penal Code contemplates that a woman must communicate her willingness to participate in the specific sexual act by words, gestures, or any form of verbal or non-verbal communication.[81] Additionally, section 90 of the IPC addresses consent that was allegedly given out of misplaced fear or ignorance. It states that consent can be tainted by misplaced fear of harm, factual misinformation, insanity, mental instability, intoxication, an inability to comprehend the nature and effects of an act, or by being a minor. The Indian Supreme Court has frequently ruled that if the victim is deemed believable and reliable, an accused person may be found guilty based simply on her testimony and without any supporting evidence. However, it is the victim's responsibility to prove beyond a reasonable doubt that she did not consent to the sexual act, and the court will only accept the victim's testimony if she can present a coherent account. In India patriarchal attitudes are still ingrained in even the courts. According to the

[80] *Supra* note 82, Sec 375 (1) was amended.
[81] *Supra* note 45 and 47.

conventional approach, consent is assumed unless it is withdrawn or denied by women. To eliminate any legal ambiguity, the law must change normatively. It must also adopt a definition of consent that is less arrogant and less justified in the absence of consent.

In the case of *Mahmood Farooqui* v. *State (Govt of NCT of Delhi)*[82] the ruling was that "a feeble no may mean a yes." This decision makes it abundantly evident what India's rape adjudication system is missing: the requirement for the legal acknowledgment of an affirmative norm of consent. In this case the importance of the information conveyed to the appellant at the pertinent period has been argued. Given the following facts, it was proposed that the appellant was informed that consent had been obtained: (a) The prosecutrix had been with the appellant and had remained with him even after learning of his drinking tendencies and when he was intoxicated and confused on that particular day. The appellant and the prosecutrix had previously kissed and hugged each other. On another occasion, when the appellant was with his wife and the wife had briefly left the room, the prosecutrix had consented to the appellant kissing her. (b) Just before the incident, the prosecutrix was making jokes and engaging in light-hearted conversation. (b) The prosecutrix simulated orgasm while performing the deed. (b) The appellant had requested her sexual favours prior to the act to which she did not expressly resent.

In this case the court observed that the appellant had no idea that the prosecutrix was in fear[83].

4.6 Locating the application of feminist legal methods in the latest case laws

The Mahmood Farooqui[84] ruling is merely the most recent illustration of how courts have interpreted a lack of strenuous physical and verbal resistance as equating to consent to sexual conduct. The Mathura rape case[85], where the Indian Supreme Court cleared the accused on the grounds that the teen victim was habituated to sexual intercourse and that the act of sexual intercourse had been a "peaceful affair," has sadly been the source of an appallingly long history of such decisions in Indian courts. In India, courts frequently use the victim's lack of physical resistance, fight, or submissiveness to justify, interpret, or indicate permission when none is actually there.

As a result of the continuous reliance on stereotypes that guide rape adjudication in India, such judgments continue to uphold the standard that requires resistance for the sexual act to be

[82] CRL.A.944/2016.
[83] As contemplated by Section 90 of the Indian Penal Code, 1860.
[84] *Mahmood Farooqui* v *State (Govt Of Nct Of Delhi)* CRL.A.944/2016.
[85] *Supra* note 54.

termed rape, despite the fact that this standard is not required by Indian law to establish rape. Due to patriarchal discourse that persists even in courtrooms, such conventional legal constructions confuse a lack of consent with total physical incapacity. This perpetuates the idea that a woman's chastity is more valuable than her life. Applying Bartlett's legal method to such factual descriptions shall bring in the possibility of a different interpretation considering the state of mind of women and the massive psychological impact of fear which the women is going through internally during the act. Like for example in Farooqui's case[86] Bartlett's method would have given a scope for raising arguments for the victim regarding her unwillingness which was in her mind and heart even though she could not clearly communicate the same to the appellant. The scope of feminist legal methods would certainly pave ways for subjective experience of the women on case to case basis.

The issues at hand as to whether or not there was consent, whether the appellant mistakenly interpreted the prosecutrix's actions as consent, whether the prosecutrix's emotions could be effectively conveyed to the appellant, and whether the appellant's mistaken interpretation of all of this as consent was sincere or just a ploy for his defence could all be better answered using the three classic legal methods of Bartlett's and having done so the decision of the case could be reverse of what it is today.

4.7 Fixing an affirmative Model of Consent

Since any sexual activity without consent would be considered rape, sexual consent would be the crucial element in defining sexual assault. There has been a recent trend of proposing alternative sexual consent models. The most common and traditional approach is the "affirmative model," which states that "yes" is "yes" and "no" is "no." The aforementioned model of consent would have some challenges in gaining universal acceptance because, in some situations, there may be an unspoken or dormant positive rejection or affirmative consent that could confuse the other party. Adopting an affirmative consent criterion in this social environment can both safeguard women's sexual autonomy and eliminate any room for consent's interpretation, perception, or construal. India should take action to reduce judicial stereotyping of rape and sexual assault victims before adopting a victim-friendly standard for rape adjudication. This standard provides absolute clarity regarding a woman's unwillingness to engage in sexual activity and reduces the likelihood that a "no" will be interpreted as a "yes. The authors are of the view that applying feminist legal methods can also be a solution to

[86] *Supra* note 85.

reduce the possibility of interpretation of ‘yes’ as ‘no’ or ‘no’ as ‘yes’ because these methods shall help the courts to possibly examine every nuance of the case from a women’s perspective.

V. Conclusion

The fact that the feminist legal methods that Bartlett uses share the premise that "knowledge is accessible and, when received, can make the law more reasonable. It is significant to notice that empirical or logical arguments frequently contradict the prevalent societal beliefs about reality. One such example is the way in which women are stereotyped in our culture. Application of feminist legal methods in deciding rape cases can possibly solve the "problem of knowability," which holds that masculine society has shaped what women know. The epistemology, which aims to make the perspective of women the normative point of departure, is referred to by Bartlett in her methods and the author feels that had this perspective being used while adjudicating rape cases in India we wouldn’t have to wait for an incident like ‘Nirbhaya’ for massively and effectively amending the existing rape laws. Feminist legal methods can help to solve the absurdity of complex situations or the case of lawlessness of a new apprehended event. Through this article the summary of arguments drawn is that the law has now taken charge of the terms which were always difficult to interpret in comprehending or establishing a charge against rape. These terms such as “consent”, “will”, “submission” were misused by the accused and misinterpreted by the courts of law, but today after the amendments we have explanation 2 of section 375 which removes the cloud of ambiguity over the concept of “consent” and there is a positive presumption in favour of a woman answering her ‘woman question’. If she says she hasn’t consented the court agrees to it. The approach of Bartlett’s Legal Methods have today become a reality of interpretation of rape laws by the courts in India but had this method been in practice abundantly we would not have had the needs of criminal amendments after protests as a result of aftermath of a case.

Today in the present status quo of rape laws the only grey area according to the authors is to plot the points in order to prove the continuing consent of a women to participate in a sexual interaction. The onus here is on the accused to prove that the women wanted the said interaction and sometimes it might be difficult for them to actually understand if there was a ‘yes’ or ‘no’

from the woman's side because consent in the contemporary interpretation of law has to be unequivocal throughout the entire process of sexual interaction between a man and woman. This question also can be solved using feminist legal methods on case to case basis. Thus the article concludes that feminist legal methods of Bartlett have a strong say in predicting premonitions and solving riddles of rape cases if applied properly.