



ISSN: 2249-894X
 IMPACT FACTOR : 5.7631 (UIF)
 UGC APPROVED JOURNAL NO. 48514
 VOLUME - 8 | ISSUE - 8 | MAY - 2019



RAPE IN UTTER PRADESH: A LEGAL PERSPECTIVE

Sandeep Kumar Aditya

**Research Scholar , Department of Political Science ,
 Baba Saheb Bhim Rao Ambedkar University ,
 (A Central University) , Lucknow.**

ABSTRACT:

In India, despite having lots of laws to ensure safety for women, violence against women is growing endlessly in India in last two decade. However Indian women have lots of respect and dignity in the ancients' Indian literature but the reality is totally different. However the violence against women is common phenomenon in whole India but it is more prevalent in north India and it is growing endlessly. Among north Indian states, Uttar Pradesh has the worst records of violence against women as it stands thirds largest in the country in cases Registered under violence against women in India. There are various forms of violence against women but the rape is most heinous from of all kind of violence against

women. The roots of this growing violence against women persisted in the unequal structure of the society which is skewed in favor of men in all spheres like economic, political also responsible for growing violence against women as the law and order is state under subject. There are lots of safety nets to ensure safety of women in the constitution but the poor implementation or non-implementation of these safety nets is also responsible for endless violence against women in states like. The delayed justice in these cases is another reason for growing violence against women in Uttar Pradesh.

Therefore the study wants to focus on violence especially the rape in the sates of Uttar Pradesh with reference to legal perspective.

KEYWORDS: *Violence, Decade, Growing, Society, Responsible, Implementation.*

INTRODUCTION :

Centuries have come, and centuries have gone, but the plight of women is not likely to change. Time has helplessly watched women suffering in the form of discrimination, oppression, exploitation, degradation, aggression, humiliation in Indian Society, women occupy a vital position and venerable place. The Vedas glorified women as the mother the creator. One who gives life and worshipped her as a Devi or

Goddess. But their glorification was rather mythical for at the sometime, in India women found her fatally suppressed and subjugated in a patriarchal society. Indian women through the countries remained subjugated and oppressed because society believed in clinging on to orthodox beliefs for the brunt of violence domestic as well as public, Physical, emotional and mental. Rape against women is worldwide phenomenon. Fear of violence is an important factor in the lives of most women. Fear of violence is the cause of lack of participation in every sphere of

life. There are various forms of crime against but in the present time sexual violence must be a major problem in any society (Indian & Foreign). Sometime it is after birth, sometime in the adulthood and other phases of life.

In the Indian society position of women is always perceived in relation to the man. This perception has given birth to various customs and practices. Sexual violence against women both inside and outside of the home has been a crucial issue in the contemporary Indian society. Women in India constitute nearly about half of its population and

most of them are grinding unless the socio-culture of India's social economics, paletion and religious fabric some time immemorial. The present study felt the need that in the era of globalization and modernization the present trends of crime against women in on increase. Recently the brutal gang rape against 23 year student in Delhi again sparked the debate on Indian men for set up and existing law and order in the country

The theme of this paper is elaborate the legal perspective of rape in utter Pradesh. it is divided into four sections. The first section focuses the history, definition and classification of rape. The second section Explain the legal provisions of rape. The third section analyses therape crime against women in utter Pradesh. The fourth section is relevance of study.

RAPE

In various mythologies we find the existence of rape. Greek mythology mentioned the rape of women. In the myth of lains and chrysipps the story of male rape was also found. Abduction of women for sexual intrusion is not an offence if her consent is subsequently obtained by way of love or persuasion. Marriage with a girl without her guardian or parents 'consent amounts to rape in France in 17th century. Offence of rape is well known in France in Roman law. The law of Rome prescribed punishment with death and confiscation of goods for rape. Sometimes rapist compelled to marry the victim in order to avoid the punishment. The offence of rape was known in the age of Smriti Sastras. In the early age of Manu Smriti, the woman was treated as a personal property of her husband, father or brother. If any person did an indecent act for sexual ravishment. Two remedies were available: One was damages and another one was compensation. In the ancient Hindu law, one of the forms of marriage is 'Rakshasa' marriage, i.e. marriage by capture. If we go through the pages of history we find that king after winning the battle, forcibly take away either the wife of said defeated king or daughter or sister of the said king and compel them to marry him. Forcible marriage is also tantamount to rape. But with the advancement of society the members of the society felt necessity to protect the right and dignity of the woman. Because in order to build up healthy and wealthy society woman has also equal role with that of men. Without preserving the dignity of women the existence of crime free society is impracticable. The French revolution raised the slogan of fraternity and equality. American constitutions provide that equality is the integral facet of social justice. Before enactment of Indian penal code, sexual assault was classified into three heads. First, forcible enjoyment of women, Secondly, adulterous sexual intercourse, thirdly, fraudulent sexual assault. We found the existence of this type of offence in the Manu Smriti (VIII-362), Nardaya Smriti and Yajyabalka Smriti (II-283-284).

In Manu Smriti we find the existence of adulterous intercourse 'Upacharkriya kali Parsha Bhusan Basa Sam Saho Khat Banonang Chaibo Sangraha Nog Smritom' (VIII-357).

Rape-definition of all atrocities to which women are subject, rape is the most heinous. Rape is a sexual intercourse done with force or an unlawful sexual intercourse with women by a man sans any consent on the part of the former. It is a forcible ravishment of a woman by men. It is one of the manifestation of her oppression by men and expressions of male chauvinism. To sum up, rape is a kind of sexual intercourse perpetrated against women by man involving force or threat of force or consent tacit or expressed.

According to Black's law Dictionary, rape means, "At common law, unlawful sexual intercourse committed by a man with a woman not his wife through force and against her will. The common law crime of rape required at least a slight penetration of the penis into the vagina. Also at common law, a husband could not be convicted of raping his wife."¹

The offence of rape in its simplest term is "the ravishment of women, without her consent, by force, fear or fraud", or as 'the carnal knowledge of a woman by force against her will'. "Rape or rapt us" is when a man hath carnal knowledge of a woman by force and against her will; or, as expressed more fully, "rape is the carnal, knowledge of any woman, above the age of particular years, against her will; or of woman child, under that age, with or against her will".

¹ Black's law dictionary, 10th ed., 2014

Section 1 of the sexual offence act 2003 defines rape as follows:

- (1) A person (A) commits an offence if-(a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,(b) B does not consent to the penetration, and (c) A does not reasonably believe that B consent.
- (2) Whether a belief is reasonable is to be determined having regard to all the circumstance, including any steps A has taken to ascertain whether B consents.

Causes and Classification of Rape

One of the burning issues of the day is rape which not only attacks the victim but society also the causes of rape are:

- (1) A perverted pleasure
- (2) Male domination in society
- (3) Influence of television and cinema
- (4) Free mixing
- (5) Failure in love
- (6) Poverty
- (7) Revenge
- (8) Communal feeling
- (9) Superstition

Table 1-

A survey reveals that the following factors are to be responsible for rising incidents of rape²

Factors to be blamed	Rate of crime
(1) Revealing Cloths	36%
(2) Perverted mind	33%
(3) Lack of stringent laws	22%
(4) Male Chauvinism	5%
(5) Rise in woman's education	2%

Source: - India Today Dec. 2013

Classification of rape

- *Marital rape*
- *Rape in uniform*
- *Gang rape*
- *Statutory rape*
- *Date rape*

LEGAL PROVISIONS

Constitutional framework

The Indian Constitution is a comprehensive document enshrining various principles of justice, liberty, equality and fraternity. One of the golden ideals of the Constitution is the Fundamental Rights which are guaranteed and comprises of the natural basic human rights, inherent in human beings. The rights of women have the originating source in the Constitution as all Indian laws emerge from and are clothed with sanctity by the Constitution. Protection of women from domestic violence as a specific right was not specifically conferred to women in India until the enactment of the Protection of Women from Sexual Violence. The Constitution of India has focused on the general rights of women as individuals and citizens of the country. As a consequence of the provisions under the Fundamental

² India today, 16 December 2013, p.57.

Rights and Directive Principles of State Policy, the overall participation and productive quality of women in the developmental process of the country is ensured.

The Indian Constitution has ensured equal status to all i.e. not only between men and men, women and women but also between men and women.³The constitutionally guaranteed fundamental right to equality before the law⁴ and non-discrimination on the ground of sex⁵ has received wide judicial interpretations to ensure gender justice to women.⁶In The sphere of right to equality no uniform judicial approach has been followed by the Indian judiciary in analyzing the legal position of women. In the early cases, the courts has employed a differential analysis in classifying between men and women as a group and in upholding legislations that conferred advantageous position to women⁷. Gradually in cases relating to public employment, discriminatory provisions favorable to men etc., the differential approach were disregarded and assured a welcoming step in ensuring gender justice⁸.

The protective discrimination guaranteed to women provides a large space for negotiating the right for women. Legislations that discriminate in favors of women have also been upheld under Article 15(3) of the Constitution of India. Freedom of speech and expression⁹ and the freedom to practice and carry out any occupation, trade or business applicable both to men and women provide the much needed space for mental and economic empowerment and personality development to women.

The Supreme Court had lamented upon the women folk in the specific Indian cultural context¹⁰ when it opined:

“Half of the Indian population too is women. Women have always been discriminated against and have suffered and are suffering discrimination in silence. *Self-sacrifice and self-denial are their nobility and fortitude* and yet they have been subjected to all inequities, indignities, inequality and discrimination”.

Human dignity is the quintessence of human rights. Women's rights as human rights are elusive in the absence of right to live with human dignity. The ILO set up in 1919, aiming at social justice and to promote gender equality, states that extensive discrimination against women violates the principle of equality of rights and respect for human dignity. In consonance with the spirit, the Constitution of India guarantees the right to life and personal liberty.¹¹ Several judicial interpretations have broadened the scope of right to life and it means not merely an animal existence but includes within itself the right to live with human dignity. While extending the protection of right to live with human dignity to protect women from suppression and oppression, the offence of rape was held as a crime against the basic human rights and also violation of the fundamental right to life enshrined under Article 21 of the Constitution of India. It was held to be the crudest and sure mode of entirely destroying her personality,

³Anjani Kant, *Women and the Law*, A.P.H. Publishing Corporation, New Delhi (1997), p.130

⁴Constitution of India, Part III, Art. 14 confers the equality before the law or the equal Protection of the laws to every person.

⁵*Id.*, Art. 15 (1) prohibits any kind of discrimination on the grounds of religion race, caste, sex or place of birth.

⁶E.g., *State of Madras v. Champakom Dorairajan*, A.I.R. 1951 S.C. 226; *Giani Ram v. Ramjilal*, A.I.R. 1969 S.C. 1144; *Manshan Ram v. Taj Ram*, 1980 S.C. 558.

⁷*Raghuban v. State of Punjab* A.I.R. 1972 P&H 117; (for the purpose of employment in prisons.); *Sucha Singh v. State of Punjab*, A.I.R 1974 P&H 162; *Nalini Ranjan v. State of Bihar*, A.I.R. 1977 Pat 171; (for deciding the extent of land holding); *Shahbad v. Abdullah*, A.I.R. 1967, J&K 120; (for serving court summons); *Yusuf Abdul Aziz v. State of Bombay*, A.I.R. 1954, S.C. 321; *Soumitri Vishnu v. Union of India*, 1985, Supp S.C.C. 137; (in the matter of sanctity of marital bed).

⁸*AIR v Nergesh Mirza* 1987 SC 1829; *C.B. Muthamma v. Union of India* A.I.R. 1979 S.C. 1868; *Ammi E.J v. Union of India* A.I.R. 1995 Ker 252, 268.

⁹Constitution of India Part III Art. 19 (1)(a).

¹⁰*Madhu Kishwar v. State of Bihar*, (1996) 5 S.C.C. 148. Emphasis added.

¹¹Constitution of India Part III Art. 21.

self- confidence and self- respect, and throwing her into deep emotional crisis. Keeping up with the spirit the Constitution of India prohibits traffic in human beings, involuntary forced labor, beggary etc.¹²

The Supreme Court while upholding the spirit of right to bodily integrity of woman held:

“Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when she likes. So also, it is not open to any and every person to violate her privacy as and when she wishes. She is equally entitled to the protection of law.”¹³

The Directive Principles of State Policy of the Constitution of India visualizes a society in which everyone will have the place of dignity and recognition of identity. It lay down certain social and economic goals to be achieved by the central and state governments in India. These Directives impose certain obligation on the state to take positive action to promote the welfare and betterment of women in the society.¹⁴ Through judicial interpretations the ambit of right to equal pay for equal work has been elevated as a part and parcel of right to live with human dignity under Article 21 of the Constitution of India.¹⁵ The judiciary has also recognized the necessity of the uniformity in the application of civil laws like law of marriage, succession, adoption, maintenance etc. which aimed towards the achievement of gender justice.¹⁶ The right of women in India to eliminate gender based discrimination particularly in respect of property so as to attain economic empowerment has been highlighted through the apex court judicial interpretation.¹⁷

The Constitution of India exhorts that it is the fundamental duty of every citizen to renounce practices derogatory to women’s dignity.¹⁸ It in turn upholds the spirit of right of a woman to live with human dignity.¹⁹ The 73rd and 74th Amendments to the Constitution of India effected in 1992 provided for reservation of seats to women in election to the panchayats and municipalities with a view to enhancing the women’s role in the democratic process. Thus social and individual responsibilities are contemplated in the Constitution of India in addition to democratic solutions. Article 51A (e) in Part IV imposes a fundamental duty to renounce practices derogatory to women.

Law

Section 375 rape²⁰ A man is said to commit “rape” if he-

(a) Penetrates his penis, 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

¹² Article 23 of part III of the Constitution of India. The state in pursuance of the said provision enacted the SITA 1956 and now it is known as the PITA. In *Vishal Jeet v. Union of India*, A.I.R. 1990 S.C. 1412; Court held that traffic in human beings includes Devadasi system. Forced labour was absolutely forbidden not only for men but also for women; it was so held in *Neerja Chowdhary v. State of M.P.*, A.I.R. 1984 S.C. 1079.

¹³ *State of Maharashtra v. Madhukar Narayan*, (1991) 1 S.C.C. 57.

¹⁴ Constitution of India, Part IV Art. 38(2) says “the state shall.... Endeavour to eliminate inequalities in status, facilities and opportunities not only against individuals but also as against group of people residing in different areas or engaged in different vocations.” Article 39 (a) provides equally to both men and women the right to adequate means of livelihood; The state has enacted the Equal Remuneration Act, 1976, and the Maternity Benefit Act, 1961 to give effect to Art. 39(d) and Art. 42 respectively.

¹⁵ *Randhir Singh v. Union of India*, A.I.R. 1982 S.C. 877; *Bhagwan Das v. State of Haryana*, A.I.R. 1987 S.C. 2049

¹⁶ 19 E.g., *Sarala Mudgal v. Union of India*, A.I.R. 1995 SC 1531 ; (1995) 3 S.C.C. 635; Article 44 directs the state to secure for the citizens a uniform civil code throughout the territory of India. The court in later cases like *Pannalal Bansilal Pitti v. State of Andhra Pradesh*, (1996) 2 S.C.C. 498 ; *Lily Thomas v. Union of India*, (2000) 6 S.C.C. 224. etc. have acknowledged the difficulties involved in introducing Uniform Civil Code

¹⁷ 20 E.g., *C.M. Mudaliyar v. Idol of Sri S. Swaminathaswami Thirukoil*, (1996) 8 S.C.C. 525.

¹⁸ Constitution of India, Part IV-A, Art. 51 A (e).

¹⁹ *Noor Mohammed v Mohammed Jijaudin*, A.I.R. 1992 M.P. 244.

²⁰ Section 375 as amended by the Criminal Law (Amendment) Act 2013 .

- (b) Inserts, to any extent, any object or a part of the body not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with or any other person; or
- (c) Manipulate any part of the body of woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (d) Applies his mouth to the vagina, anus, and urethra of a woman or makes her to do so with him or any other person.

Under the circumstances falling under any of the following seven descriptions:-

First- Against her will.

Secondly- Without her consent.

Thirdly- 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.

Fourthly- 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.

Fifthly- 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 which she gives consent.

Sixthly- With or without her consent, when she is under eighteen years of age.

Seventhly- When she is unable to communicate consent.

Explanation 1- For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2- Consent means an unequivocal voluntary agreement when the woman by word, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1- A medical procedure or intervention shall not constitute rape.

Exception 2- Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Scope section 375 has been amended in order to give the definition more wide and gender neutral. The act like penetration of penis, or insertion of object, or a part of body not being penis into the vagina, mouth, urethra or anus of another person or making her to do so with him or any other person or manipulation of any part of the body of woman or application of mouth or touching private parts to the vagina, mouth, urethra, anus of another person or making her to do so with him or any other person constitute the offence of rape. The amendment of 2013 defines the expression consent. It means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act.

Another feature of this amended section is that it clarifies the penetration irrespective of any extent. It also provides that non-resistance due to lack of physical strength cannot be regarded as consenting to the sexual activity.

Acts not constituting rape the acts not constituting rape are:

- (a) Medical procedure or intervention.
- (b) Sexual intercourse by a husband with his wife above fifteen years of age.

In order to prove the offence of rape the prosecution is under obligation to establish the following elements:

- (1) That the accused has committed sexual intercourse.

- (2) That it was committed against the will and without the consent of the victim. When rape is committed against will and consent of the victim, the age of the victim, the age of the victim is irrelevant.
- (3) The victim must not be a consenting party. If the victim is under 18 years of age, her consent is immaterial for the offence of rape.
- (4) That the consent of the women was obtained by putting her in fear of death or of hurt.
- (5) That the consent of the women was procured by reason of unsoundness of mind or intoxication or by administering unwholesome substance, *i.e.* drug, wine etc.
- (6) That the consent of the women was obtained by deceitful means, *i.e.* by promise of marriage, in the name of fake marriage.
- (7) That the accused has committed penetration. Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.
- (8) If the accused is husband of the victim, the age of the victim must be under fifteen of rape.
- (9) That the accused must have intention to commit the offence of rape. Mere touching of female genital organ of the victim or uttering word to advance illicit proposal or trying to be stripped off wearing apparels does not constitute an offence of rape.

Section 375 of the Indian Penal Code divided sexual assault into seven degrees-

- | | |
|------------------|-------------------|
| 1. First degree | 5. Fifth degree |
| 2. Second degree | 6. Sixth degree |
| 3. Third degree. | 7. Seventh degree |
| 4. Fourth degree | |

RAPE CRIME AGAINST WOMEN IN UTTAR PRADESH

Uttar Pradesh is the biggest state among states India in population area is 240,928 sq. kms. Its population is 199,581,477 (according to year 2011 census) male population is 104,596,415 and female population is 44,985,062. There are 75 districts and 1526 police station and 72 Mahila police stations.

Uttar Pradesh, India's most popular state, has a poor history of governance. Uttar Pradesh where violence against women is prevalent and women's status is low. Indicators of relatively high socio-economic status of status of the individual leave According NCRB²¹ in U.P. the highest crime in statistic up stood third with nearly 23569 crimes against women reported during 2013. **Uttar Pradesh** State stands **third** in all crime records in 2013. **First** in no of murders, kidnappings **fourth** in num. in rape, **second** in num. of robberies, thefts, dacoities. **Six** in num. of riots. In 2013 there were very complex situation in Uttar Pradesh in terms of governance .huge number of sexual crimes were reported.

A mixed trend in the incidence of rape has been observed during 2010-2014²². These cases reported decrease of -11.14% in 2010 over 2009, an increase of 30.64% in 2011 over 2010, and a decline of -3.86% in 2012 over 2011 while an increase of 55.37% in 2013 over 2012.

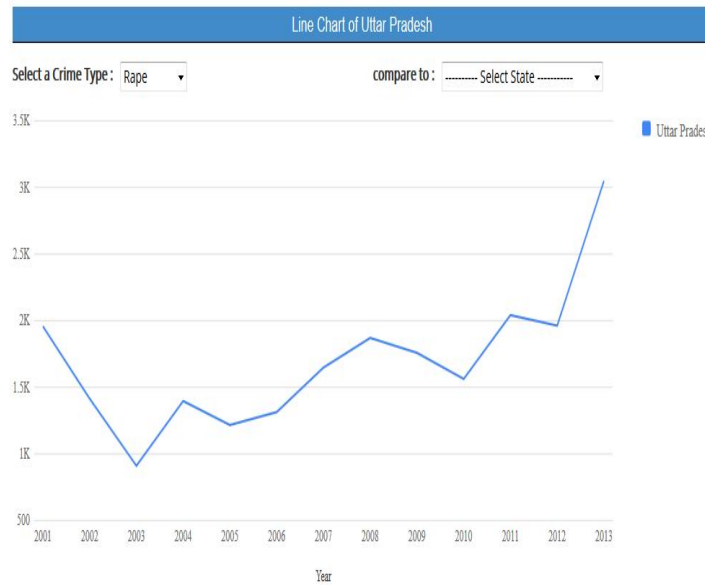
The highest incidence of rape cases were occurred in the month of April, May and decreasing trend from January of February.

During 2013 under the head rape case (3050) accounted for 0.95% to the total cases of crime against women were reported of which, highest number of cases were registered from Meerut Range (389). The lowest number of rape cases were occurred in Mirzapur range (47)

²¹ NCRB Report 2014

²² Up state crime rate bureau report 2014

Figure -1



Line chart of rape of Uttar Pradesh

Table-2
Rape crime against women and girl during 2010-2014 and percentage variation in 2014 over 2013-

Crime head	2010	2011	2012	2013	2014	% change in 2014	Rate of crime 2013	Rate of crime 2014
Rape	5663	2042	1963	3050	3467	13.67	1.53	1.74

Source: - SCRB 2014

Table-3
Crime against Women and Girl Disposal by Police during 2014 in Uttar Pradesh

Crime head	Cases pending trial from the previous years	Cases sent for trial during the year	Cases withdraw by the govt.	Cases disposed off by plea bargaining	Cases for trail during the year	Cases compounded or withdraw	Cases in which trail were completed	Cases convicted	Cases acquitted or discharged	Cases pending trail at the end of the year
Rape	5574	2850	0	11	8413	17	1183	593	589	7213

Source:-SCRB 2014

CONCLUSION

Sexual violence against women (Rape) is a serious and prevalent problem worldwide, in all religious and social class. Studies have shown that sexual violence is more widespread in societies where women’s rights are lacking or neglected not only is it a violation against human rights but it also damages physically and psychologically the wellbeing of individuals and families.

Furthermore ,other effectsare that it can hamper development in societies if either man or women is kept subordinated andnot given the full potential of exercise the capabilities that person has .An example of thisis that it constrains women’s participation in development projects carried out byfor example NGOs.Thus stopping this kinds of violence is outmost important when working toward poverty reduction and human security,hence it is highly relevant both as a peace and development problem.

BIBLIOGRAPHY

- Stacy, L. Millicoat,(2014),Women and Crime, new Delhi sage publication.
- Ray, Sukumar, (2015), sexual violence against women, New Delhi Eastern law house.
- Vandana, (2009), sexual violence against women: penal law and human rights perspective, lexis Nexis, Butterworths Wadhwa, Nagpur.
- Menan,Nevedita (2001), Gender and politics in India,oxford university press.
- ClairM. Renzetti L. Eddeon andRequel Kendry Berge,(2011),source book ofsexual violence against women,Sage Publication, New Delhi.
- China,Ramanjit Singh,(2011) Sexual Violence against women in India, New DelhiNHRC.
- Simon-di Beauvoir, (2010), Seconds sex,Random house press.



Sandeep Kumar Aditya

Research Scholar , Department of Political Science , Baba Saheb Bhim Rao Ambedkar University , (A Central University) , Lucknow.