

RAPE: AN UNDAUNTED LAW IN INDIA

*Rupal Shravan Waksay**

Rape law in India:

The Indian Penal Code under Section.375 after the Criminal Law (Amendment) Law, 2013 defines rape as follow:

375. 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
- 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 him or any other person; or
- c. manipulates any part of the body of a 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, 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 that to which she gives consent.

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

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 words, 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 the 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.'

STATE AMENDMENT

Manipur: - (a) in clause sixthly, for the word "sixteen" substitute the word "fourteen"; and

(b) In the Exception, for the word "fifteen" substitute the word "thirteen".

Section.376 provides punishment for rape. The accused under this section shall be punished with imprisonment of either description for a term which shall not be less than seven years and which may be for life or for a term which may extend to ten years and shall also be liable for fine.

Rape laws of other countries:

When we compare rape laws around the whole world we see how India lacks in legislation while making stringent laws for heinous offence like rape.

As discussed above Section.375 and Section.376 of The Indian Penal Code provides for the definition of rape and punishment for rape respectively.

Let us now discuss laws for offence like rape in different countries like China, Egypt, North Korea, Saudi Arabia, Afghanistan, and United States of America.

1. China

In China, strict punishment is given to rapists, and a death penalty is declared once the rapist is convicted. This is done by firing a single bullet at the spinal cord joining the neck. Another punishment given to the rapists in China is castration. It is worth noting that the court proceedings are very quick in this country.

2. Egypt

In Egypt punishment for rape, is death by hanging. This country still follows the old school method for punishment but rape is one crime that deserves death.

1. North Korea

In North Korea, death by firing squad is the punishment a rapist suffers once he is convicted for rape. This method for punishment does not devour much time for proceedings in the court of law.

4. Saudi Arabia

Saudi Arabia is one such country where laws are relatively strict. If a person has been convicted of rape in this country, then he is sedated and beheaded in public within days of his trial.

5. Afghanistan

Rape cases are very far and few in Afghanistan, because you'll be shot in the head within four days of being caught or directly hanged to death.

6. United States of America

U.S.A has two kinds of law- state law and federal law. If a rape case falls under the federal law, then the rapist is awarded a few years of imprisonment which shall extend to imprisonment for his entire life.

The rate of crimes in these countries is relatively low as compared to that of India, as the legislature and judiciary of these countries have taken an effective step in lowering the rates of such crime. For instance, In China, the statistics show a number of 31,833 cases of rape in a year¹, which is relatively less as of India.

* *P.E.S's Modern Law College, Ganeshkhind, Pune.*

¹ "Rape in China, University of Southern California(May7,2009)" uschina.usc.edu Retrieved 2013-12-03

²In India, cases registered under *crime against women*³ during 2015 are 3, 27,394. *Rate of crime against women*⁴ during 2015 (All India 53.9) A total of 34,651 cases of rape under section 376 IPC were registered during 2015 (excluding cases under the Protection of Children from Sexual Offences Act, 2012) Out of 34,651 total rape cases registered in the country, 95 cases were registered as custodial rapes during the year 2015. Times of India reported the data by National Crime Records Bureau unveiling that, 93 women are being raped in India every day⁵.

Ineptness of rape laws in India:

The opinion and responses which come from different parts of the countries reveal that the effect of the laws provided for the victim in case of offences like rape are not meted out for the purpose sought. And thereby, requesting the legislature for amending the laws by providing more stringent and higher punishment.

- Causes for increase in number of crimes like rape:

There are numerous factors ensuing increase of number of offences like rape, and many other offences relating to women.

² National crime record bureau (NCRB); ncrb.nic.in

³ gender specific crimes are characterised as 'Crimes against Women'.

⁴ Rate of Crime against Women means number of cases registered under crimes against women per 1,00,000 female population.

⁵ Times of India. *Times of India*. Retrieved 3 June,2016.

1. No agitation for the existing laws.

The accused is apt to commit such a heinous crime as there is no fear intended for the existing law. Person committing such crime do not fear laws, as in present phase, bail is easily made available even in case of non-bailable offence. The judiciary must take note on this point in such a approach that other bad person may deter to commit such a heinous crime in near future.

2. Less reported cases due to fear of isolation and social stigma.

The victims of rape cases often do not report their case to the concerned police station due to fear of expulsion from society. This is chiefly because of the negligent behaviour of the police officers and the society which tag such victim as debauched. "Apart from other factors, the low conviction rate in the cases of rape is the biggest worry we have today. There is hardly any deterrence. Law should provide fast track courts to deal with such cases," says Girija Vyas, Chairperson, National Commission for Women (NCW). Brinda Karat, All India Democratic Women's Association (AIDWA), member says, "I have raised the issue in the Parliament several times that there is a need to step up conviction rate in rape cases drastically. Poor legal system, wrong understanding of policemen in these cases and lengthy procedures especially in child rape where after horrifying rounds of investigation the victim starts feeling that she is an accused and should not have registered the case, are few reasons for low conviction rate".

3. Lack of proper police security.

There is no proper police security made accessible for the victim, and as the accused can effortlessly harm the victim after the case is reported fearing which

the victim prefers to keep mum. The police officers also linger inactive in performing their duties and fall short in considering the nature of such an offence. Not only the lack in security is the cause, but there is also no optimism for helping hands from the policemen as they fear the past experiences which enlighten the cases where many getting raped by the policemen. As exemplar, let us consider the famous Mathura rape case, where in 1972 a girl named Mathura was raped by two policemen and subsequently they were acquitted by the session court by contenting that the girl was said to have been ‘habituated to sexual intercourse’. Later, large protests led to formation of women’s rights group and a subsequent change in the Indian rape law.

4. Less severe punishment under the Indian law.

The punishment provided for an offence of rape under Sec.376 of the Indian Penal Code does not describe stringent punishment for the accused convicted for rape therefore the person committing rape does not think about the consequences he will have to suffer. The punishment is markedly merciful in case of juvenile delinquents, the court must look into the nature of crime committed by the delinquent instead of considering his age, before passing its judgement. As, in the case of Delhi gang rape of 2012, one of the six accused was treated as minor and given a sentence of 3years in a reform facility⁶, the main accused allegedly committed suicide in police custody and the remaining four were sentenced to death by hanging⁷. Why was not the minor accused also punished equal as those remaining accused for the same crime committed by him? When this minor can commit such a heinous crime it must be well

⁶ “Fast track courts awards death sentences to convicts of Delhi gang rape case” Ramalingam. Va, Le International Journal. 14 September 2012.

⁷ “Delhi gang rape: Four sentenced to death” BBC News. 13 September 2013.

thought-out that he is mature enough to understand the consequences of such an act, and the courts should, therefore, take note of such point consecutively to provide justice to the victim.

5. Bail easily available.

Another foremost reason for increase in rate of rapes in India is, the courts granting bail in non bailable offence with some amount on personal bond and an order that the accused will not leave the town until the final judgement is passed. Apart from the accused being ignorant about the punishment that he will suffer, he is also persuaded about the fact that punishment for the offence committed is not rigorous in nature and the court, therefore, will easily grant him bail. Recently, the Bombay High Court granted bail to a 20years old B.Com student named Avinash, who was arrested and booked for rape under the Indian Penal Code and also charged under the Protection of Children from Sexual Offences Act repeated aggravated sexual assault on a child below 12 years of age⁸.

6. Power of influential people.

The person who is in power abuse the same while committing the crime, supplementary to get bail from the court of law. He also succeeds in this criminal act and sadder part is that even the court fails to consider such acts. The Delhi case, where the Delhi minister Sandeep Kumar, arrested on rape charges, was granted bail by the Delhi court. Special Judge Poonam Chaudhry

⁸ “Accused of repeated rape of minor gets bail”. Sunday Times of India, Pune. November 13, 2016.

enlarged the AAP legislator on bail on furnishing of a personal bond of Rs. 1 lakh and surety of a like amount⁹.

Sufferance of victim:

The victim who has gone through such a disgusting situation suffers lot of pain be it physical or mental. The unbearable pain that she go through is beyond mind's eye. The trauma which the rape victim thole¹⁰ is beyond imagination and it is not easy for a woman to overcome this trauma. Mental trauma is the worst thing that the person eternally suffers, as it destroys our inner soul entirely. No one could ever envisage what the victim goes through as it is incredibly difficult to just understand the state of victim without going through the same. As observed by Justice Arjit Pasayat: "While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female." And also Justice Krishna Iyer has observed, in a very famous case of Rafiq v. State¹¹: "A murderer kills the body but a rapist kills the soul."

The victims also suffer isolation and social stigma, as the society carries the mentality which tags such rape victims as debauched. The victims in spite of being blameless have to face such kind of ejection in the society. No one is ready to acknowledge her as they consider rape victims impure and therefore these innocents remain unmarried.

⁹ Delhi| Press Trust of India. "Arrested over Sex CD Allegations, Delhi minister Sandeep Kumar gets bail". Nov,2016.

¹⁰ Dictionary meaning: *to suffer*

¹¹ Rafiq v. State of Uttar Pradesh, 1980. <https://indiankanoon.org/doc/105261366/>

The upshot of rape on the victim is so bad that she start hating herself for what has happened to her. The consequence she faces due to such incident not only makes her hate the humankind but she also establishes hatred towards herself as well.

There are some cases where it is found that the rape victims also perpetrate suicide so as to save themselves from facing the abovementioned consequences which would further make their life miserable.

Recommendations:

There are factors accountable for increase in rate of rape cases and steps are ought to be taken for betterment of our country and for the safety and security of women. Weaknesses in the legal system make it very possible for rapists to escape justice.

- Especially the judiciary must be ready to lend a hand by putting into view efficient steps for administrating justice to the concerned. For that matter, there should be fast track courts established for disposal of rape cases. And a move in this concern was appreciated when there were six fast track courts created after the Delhi gang rape case and had also included a mandatory sentence of minimum 20years in case of gang rape¹².
- The judiciary, i.e. the courts must gaze into the relevant and the most important aspect of the case during the proceedings so that they do not overlook any factor while passing an order and by prejudicing the innocent. In Mohd. Habib v. State¹³, the Delhi High Court allowed a rapist to go scot-free merely because there were no marks of injury on his penis- which the High

¹² *One year after New Delhi Gang Rape, India still struggles with rape culture* | ThinkProgress

¹³ 1989 Cr.LJ 137 Delhi

Court presumed was a indication of no resistance. The most important facts such as the age of the victim (being seven years) and that she had suffered a ruptured hymen and the bite marks on her body were not considered by the High Court. Even the eye-witnesses who witnessed this ghastly act, could not sway the High Court's judgment.

- There should be advanced and stringent punishment set for the accused in case of rape, as it is believed that rape is the nastiest crime also even worse than murder. The courts should mull over the nature of the crime and provide justice to the victim, and should also be considered while dealing with juvenile delinquents. The nature of the crime committed by the accused should be considered in lieu of the age of the accused while delivering the judgement. In the Delhi gang rape case¹⁴, the juvenile was sentenced only three years imprisonment while the remaining four were sentenced to death. The juvenile who was capable enough to know the nature of the crime should be considered mature enough to comprehend the consequences of the crime and for that reason, he should have been given the same punishment as of the remaining accused.
- If the punishment for heinous offences like rape and murder are look into and changed in order to bring fear in the society and in the mind of convicts, there will be diminution in number of conviction for such offences as there will be fright in the society and a person will take heed before committing such an offence. When there will be fear in the society the conviction will simultaneously lessen and the women in the society will feel safe and sheltered. Today, at this time, India is seen as one of the countries where women survive with considerable trepidation and in

¹⁴ "Delhi gang rape: Four sentenced to death". *BBC News*. 13 September 2013. Retrieved 13 September 2013

order to stay protected and tenable there are many who prefer staying home more willingly than stepping out and socialising.

- Apart from these, the judiciary must make fair and proper implementation, and there should establishment of more special court in order to deal with cases of violence against women.
- Reformation and amendment of criminal law concerning cases of rape and other sexual violence.
- Establishment of apparent policies and measures aimed at protection, rehabilitation and compensation for the victims of rape.
- Promoting human attitudes toward women based on the equality and dignity and the struggle for the elimination of stereotypes and degrading beliefs toward women by the government agencies, institutes, university, mass media and civil society organizations. And strive to avoid using abusive or degrading proverbs and sayings against the women.
- Developing the judiciary, legislative, administrative policies for criminal law in order to protect, rehabilitate, and reform the dignity of the victims of sexual assault.
- Active participation in strengthening the civil society and media activities for promoting public awareness concerning the rights of women and the remedies available for violence of such rights.

Conclusion:

In order to have deterrence, the court ought to fairly amend the laws regarding such heinous offence of rape and should take effective measures for implementation of such laws, in addition to the rights and remedies availed to the victim of such offence.

The courts and the governmental agencies must also come across the issue where the accused are released in such cases by paying huge amount of money, where the victim against whom such crime is committed include child as well.

The crime rate of such heinous offence is escalating day by day without any deterrence and which is expected to bring to a standstill, if not completely draw to a close but at any rate to impede.

Therefore the governmental agencies are the only system that can bring change in the society and our country may perhaps be counted as one of the countries having lowest crime rate for offences committed against women.

Thus to bring safety for women in our society and to provide justice to the victims it is important to put in practice what is jot down in the list of recommendations so that there is no violation of the rights provided in the law.

