

Role of Judiciary to Provide Better Justice to Rape Victims

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ABSTRACT:

A chain of brutal rape cases in India has shattered the nation to its core. In our country where on daily basis nearly or approximately 106 rape crimes committed per day , what are the steps taken or the laws made to stop these crimes? And whether the laws made are seriously implemented? In this paper basically we are talking about the role of the judiciary in providing better justice to the rape victims. This paper will consist of the committing of the heinous crimes like rape, the independency of judiciary which many times go beyond its powers to provide justice to the rape victims, another thing is how forensic science or forensic evidences helps or assists in favour of the survivors or victims of the rape, how judiciary has changed from the past, what are the differences between its past judgements and the decisions in current scenario. Here many cases have been cited with their judgements to show the judicial trials or efforts to provide justice. The very popularly known as Nirbhaya case has been discussed in this paper, which shattered the whole nation. And because of this incident many amendments were introduced to the laws of the country whether it is in constitution or in the statute (Indian Penal Code). These amendments are also have been discussed in this paper and the verdict of the verma committee set up immediately after the Nirbhaya Case. Mentioning of magnifying of punishments given to the accused of the offences so that such crimes can be stopped in the nation.

I. INTRODUCTION

Rape is usually defined as a sexual intercourse without the consent of that person with whom the act has been committed. It is sexual intercourse or can be any different manners of sexual penetration. This kind of action may be committed forcefully, against the will of that another person or without the victim's valid consent or may be by coercion or in case that person is not able to provide his or her valid consent. The incapability of giving consent can include unconsciousness or unsoundness of mind etc. Another term which can be interchangeably used with the term rape is 'sexual assault'. Rape is categorized as one of the most heinous crimes. Rape can be assumed as a nightmare which has disastrous and traumatic effect on the life of the survivor. The after-effect of this crime on victim's life can include depression, horror, uneasiness, dejection, guilty conscience etc.

But how this crime can be stopped? Who will stop it? Who will provide justice to these rape victims? In India rape is the fourth most commonly committed crimes. A large number of rape cases in India are unreported. Rape has been defined under section 375 of Indian Penal Code.

II. IMPORTANCE OF FORENSIC EVIDENCE TO PROVIDE BETTER JUSTICE TO RAPE VICTIMS¹

Forensic evidences are basically the proofs or records of the injuries and the mental trauma of the victims who are sexually assaulted which usually comprises (a) body solutions like (blood, urine, semen etc.) (b) Filaments and outer spoilage(e.g. hair, nail scratching, etc.) (c) Injury to private parts or any other body parts. Immediately happened sexual activity can be proved by using such specimen. With help of this the essence of offence, the usage of force or any kind of resistance can be proved. The main motive of these kinds of forensic examinations is the protection and well being of the victims and another aim is the documentation and accumulation of trials to support criminal prosecution. There may be an increase of the complicated queries because of the use of forensic science method or forensic evidences in the criminal justice system, about its collection, its effect on the legal aftermath and how it has been interpreted by the forensic professionals, judges or juries. There may expectations arise in the victims and juries that the forensic evidence will be there and it will help in the proceedings and truth will come out about the happenings in the criminal incidents.

Now the question arises here is whether the forensic evidence is connected with any constructive or useful legal results? The answer to this question is not absolute, it differs. It is not necessary that all kinds of forensic evidences are uniformly productive. But the consequences of forensic evidences of injury are more often connected with positivity in comparison with another form of evidence. What is the role of forensic evidence in the life of the victim? Immediately after the happening of such a traumatic incident of sexual assault, experiencing the forensic examination is very difficult for the victim of such crime.² Remarkable attempts³ have been made for the betterment of victim's medical supervision or protection and forensic examination. Such undertakings comprises of the foundation of the ultimate practice agreements and fundamentals, professional teachings. Regardless of the possibility of sufferings or pain medical and forensic examination can play an affirmative and curative or remedial role in the victim's life which can give encouragement to the victim's feelings of security, safety, protection or being strong. Many of the times the forensic evidences plays a very important role and becomes favourable or helpful for the prosecution. The lack of forensic evidence or proof can sometimes make the case weak and the justice can be hindered. Forensic evidences have many different aspects or features when it has to play a role during the investigation process. Initially it can support or help police in preparing their case. And may be because of this there may be an increase in the confidence level of

¹ Sylvine, *Justice For Rape Victims In India*, IPLEADERS INTELLIGENT LEGAL SOLUTIONS, (Mar. 10, 2019, 1:46 PM), <https://blog.ipleaders.in/justice-rape-victims-india/>.

²Rape Victims, *supra* note 1.

³ Sylvine, *Justice For Rape Victims In India*, IPLEADERS INTELLIGENT LEGAL SOLUTIONS, (Mar. 10, 2019, 1:46 PM), <https://blog.ipleaders.in/justice-rape-victims-india/>.

police, they can be more positive or assertive regarding the case, they willfully structure the case and knows that the proofs would be imminent and then they can put some more labour into another features or characteristics like gathering another proofs from the crime spots, suspects and spectators.

It seems that forensic medical evidence helps the criminal justice performers to make judgements regarding toughness or power of sexual assault cases and to proceed with their attempts correspondingly. For police this happens by structuring a case and confidence building. For prosecutors, it seems to affect their decision making by survivor's reliability, power of the case and procedure or policy.

III. ROLE OF JUDICIARY⁴

In India judiciary is the third pillar of the government which is an independent from rest of the two pillars i.e. legislature and executive. Here judiciary plays two roles, first one is (a) to interpret laws and another one is (b)judicial activism which means to go beyond the law and use it's discretionary power to provide justice to the victims. Judiciary is a balancing wheel of the federation. The function of the judiciary is to keep a balance between the fundamental rights and social justice. Judiciaries also have a control over the administrative tribunals. Another chief function of judiciary is to set precedent for the welfare of the public. Law requires a powerful bureau to preserve its existence.

Most of the times the problem arises are that how the courts interpret the consent of the victim. Recently the amended genre of the law contemplates it as sexual assault if the penetration has been done without the consent of another person for the purpose of sexual intercourse. There was a case in which the court raised question on the character of the girl who was a raped victim, the court judged the girl of the loose character and this interpretation was done on the ground that the pubic hair of the minor victim had been shaved off which means that her consent was there for sexual intercourse. And the accused had set free on this ground. Various interpretations can be subjected to the term sexual assault.

In the case of **Tuka Ram v. State of Maharashtra**,⁵there were no signs or marks of injury on the body and it was assumed that there was no resistance on the girl's part and Supreme Court observed that whatever has happened was an affair with the mutual consent of both partners and the allegations made by the girl are false. In the case of **Mohd .Habib v. State**⁶ Delhi High Court set the accused free as it presumed that the accused is not guilty because there were no marks of injury on his penis which can indicate there was any resistance from the

⁴ *Making The Criminal Justice System More Responsive To Victims*, Department of Justice Canada, (Mar. 9, 2019, 9:32 AM), <https://www.justice.gc.ca/eng/rp-pr/cp-pm/cr-rc/dig/vict.html>.

⁵ Tuka Ram v. State Of Maharashtra(2011) 14 SCC 250 (India).

⁶ Mohd .Habib v. State, 35 (1988) DLT 170 (India).

opposite person. Though the victim was minor (seven years of age) and her hymen was broken or fractured and there were bite marks on her body the court did not consider all these things.

But in the present scenario many changes have been done in the judiciary and the judges use their own discretion to provide justice to the rape victims. Now in accordance with the international treaties and conventions the laws are being interpreted by the courts in the territory of India. In late 1983 the clarification has been made by the SC that even if previously the victim has been proven immoral, promiscuous or incontinent but in present situation she can deny her consent for any kind of sexual intercourse to anybody because she is not merely an object but a human being who has the right to live with dignity. In 1983 the first amendment has came to the criminal law in which there was a change in the Evidence Act⁷ which stated that if the any victim suffered from rape has said that her consent was not there to the sexual intercourse then the court will believe it to be true.⁸ Later on there was introduction of custodial rape in the Indian Penal Code. In 1992 **vishakha judgement** came which became a landmark judgement in which Supreme Court for the first time gave the definition of ‘sexual harassment at work place’ and the landmark guidelines were laid down by the apex court. In the case of *State of Punjab v. Gurmit Singh*⁹ the Supreme Court gave directions to the lower courts that even if the woman or girl has been proven to be accustomed to sexual activities, the court cannot label her to be of loose character. Another case of *State of Maharashtra v. Madhukar N. Mardikar*¹⁰ the Supreme Court held that if the nature of any woman is immoral or obscene that does not mean that that woman is open to everybody and anyone can do whatever he wishes to do.

in the case of **Ibrahim v. Emperor**¹¹, the victim was grazing her cattle on a little farm and the cattle of the accused trespassed there. The victim chases away the cattle of the accused and had complaints with the accused and the accused then forcibly raped her. She started crying which gained attention of two persons passing by there that later became prosecution witnesses, rescued her. The court here held that the proofs provided here are valid and confirmed by the evidence of an impartial and uninvolved witness and there is no doubt that the rape was committed.

IV. NIRBHAYA CASE

Nirbhaya was a 23 year old girl who was physiotherapist intern. She was gang raped in Delhi in December 2012. She was raped in a moving bus at night when she was returning home. Nirbhaya was with his friend who

⁷ Dr. Sonia Aneja, *Judicial Response to Sentencing in Rape Cases*, IJLIR JOURNAL, (Mar. 9, 2019, 4:32 PM), <https://ijlir.com/2016/12/12/judicial-response-to-sentencing-in-rape-cases/>.

⁸ Heather Waltke, *Sexual Assault Cases: Exploring the Importance of Non-DNA Forensic Evidence*, NATIONAL INSTITUTE OF JUSTICE, (MAR. 10, 2019, 5:27 PM), <https://www.ncjrs.gov/pdffiles1/nij/journals/279/Pages/non-dna-evidence-in-sexual-assault-cases.aspx>.

⁹ State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 (India).

¹⁰ State of Maharashtra v. Madhukar N. Mardikar, A.I.R. 1991 SC 207 (India).

¹¹ Ibrahim v. Emperor, A.I.R. 1928 Lab 544 (India).

was knocked down with iron rod by six rapists. The incident happened that night shook the whole nation. She was brutally raped. Her intestines were destroyed by inserting a L-shaped rod into her private parts. According to her medical reports her genital organs and abdomen were having septic injuries. After brutally raped by several men she was thrown out of the moving bus and the vehicle was tried to run over the half naked woman who was totally bloodstained. She was dead and doctors revealed that only five percent of intestines were left inside her body. This crime provoked huge protests throughout the country. It was 16 December 2012 which is called as dark fateful night. This incident shook the nation and after the happening of this incident many laws were amended, fast track courts were introduced. And the list of crimes also included voyeurism, stalking, and intentional touching. Even the driver of the bus in which the crime has been done, committed suicide in Tihar jail. The accused were sentenced to death and one of them was sent juvenile court as he was a minor. The severity of punishments given to the accused of the crime of rape has been increased. The Indian Penal Code defines the punishments of the rapists according to the magnitude of the crime that how brutally it has been done.

V. VERDICT OF VERMA COMMITTEE

Immediately after the Nirbhaya incident on 23 December a three member committee was constituted which was headed by Justice J.S. Verma the chief justice of the Supreme Court. The committee was composed to advocate amendments in the law or laws defined in the Indian Penal Code so as to contribute for fast trials and to magnify the punishments of the accused of the crimes like sexual assault against women. The report was submitted by the committee on January 23, 2013. That report provide recommendations on the laws that are related to rape, medical examination of survivors, trafficking, sexual harassment, child sexual abuse, police. The rape is differentiated within and outside the marriage in IPC.

Some main schemes or proposals constructed by Verma committee after the brutal Delhi gang rape; It listed voyeurism, intentional touching and stalking in the category of offence.

- Made amendments in the rape laws.
- Analysis of security laws in disputed areas.
- Observe legal patriarchal rural panels.
- Human trafficking¹²
- Observe medical examination of rape victims.

¹² SAGE Publications, *Violence Against Women (VIOLENCE AGAINST WOM)*, RESEARCHGATE, (Mar. 6, 2019, 5:34 PM), https://www.researchgate.net/journal/1077-8012_Violence_Against_Women.

- Police reforms
- Electoral reforms
- Bill of rights

VI. CONCLUSION

Indian judiciary as an organization attained a significant honour from the humankind of this nation. And this respect from the people which judiciary has gained is because of its members' independency, impartiality and honesty. This was a part of the mankind's desires for preserving Rule of Law and establishing a impartial, unbiased or equitable society. The greatest power of the judiciary was that, that from the viewpoint of the society, the judges were disconnected and were impartial and honest and that the masses have the confidence in the organisation of judiciary. That is why today, among the three organs of the country, judiciary gets higher appreciation and honour. For the society to maintain its importance and relevancy, it is necessary that the law must be in progress and adapt changes with the progress of the society because it will not be beneficial for both the law and the society if the society keeps developing and the law remains constant. The judiciary could neither be delayed nor it could be evasive. The higher courts have played an important role in protecting the fundamental rights of the people of the country. In today's date the ambit of article 21 of the Indian Constitution have been extended so far and it provides that right to live does not merely includes the existence of the person rather includes right to live with dignity.¹³

¹³The role of forensic medical evidence in the prosecution of adult sexual assault, AUSTRALIAN INSTITUTE OF FAMILY STUDIES, (Mar. 5, 2019, 6:35 PM), <https://aifs.gov.au/publications/role-forensic-medical-evidence-prosecution-adult-sexual-assault/export>.