

Rape Laws and Amendment

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Rape is the term which is very horrible only by its name. The term rape per se portrays a barbaric image in the mind of common peoples. Rape is a very serious and controversial topic in our country for a long time. This not just an offense that can satisfy the victim of that offense emotionally by pronouncing the appropriate judgment in his favor or by awarding proper punishment to the offender; for example, Murder is considered as gravest crime under IPC,1860. if someone intentionally caused death of someone, then justice can be delivered by awarding punishment according to sec 302 of IPC and quantum of punishment is not in controversy also, but in the case of Rape; it is emotionally graver than murder, if any male rapes a female, suppose court awarded him death sentence (imagine) but the question is that “will it be enough for that woman whose dignity is devastated by the act of the offender?” surely not because rape takes the dignity of a woman without her consent and she needs to survive in society with that taint, which takes her to a more painful situation, it affects her future in a very negative manner.

In the case of *Common Cause v. Union of India*¹ –

The right to life and liberty as envisaged under Article 21 of the Constitution is meaningless unless it encompasses within its sphere of individual dignity.

Court has expanded the spectrum of Article 21 to include within it the right to live with dignity as a component of right to life and liberty.

And the quantum of punishment for rape is also a point of debate. The opinion of the public is very diversified; in fact, our leaders also express their opinions in Lok - sabha like²-

Samajwadi Party (SP) MP Jaya Bachchan said that rapists should be lynched. "People now want the government to give a definite answer. These people (accused in rape case) need to be brought out in public and lynched.

Vijila Sathyananth, AIADMK MP, demanded death penalty for the accused in rape-murder case of the Telangana doctor. He said: "The country is not safe for children and women. Four people who committed this crime should be hanged to death before December 31. A fast track court should be set up. Justice delayed is justice denied."

¹ 2018 5 SCC 1: 2018 SCC OnLine SC 208

² Desk, I. T. W. (2019, December 6). 4 Hyderabad rape-murder accused killed, chorus of support for cops: 10 points. Retrieved December 19, 2019, from <https://www.indiatoday.in/india/story/hyderabad-rape-case-police-encounter-accused-shot-dead-10-points-1625762-2019-12-06>.

Kishan Reddy said, "There is zero tolerance towards crimes against women and children. Our government will soon bring requisite amendments to CrPC and IPC." He said that the government will try and bring in the changes in this winter session of Parliament if possible.

Whether existing law for rape requires better implementation or need of amendment to make it more strict

Before reaching any conclusion, we need to review past reports for better understanding of this situation, because it is easy to chose between right and wrong but it is most difficult to chose between two right decisions the first one is about how to implement the existing law or the second one is demanding amendment in existing rape laws and make it more strict. We need to decide between two very wisely.

"The welfare of the people shall be the supreme law"

----- Cicero

Requirement of better implementation; why strictness in law is not appropriate

‘The strictest law sometimes becomes the severest injustice.’

---- Benjamin Franklin

After Nirbhaya gang-rape case , January 2013 a committee was constituted, for the recommendation of amendment in criminal law. This committee had widen the definition of term Rape-

Rape should be retained as a separate offence and it should not be limited to penetration of the vagina, mouth or anus. Any non-consensual penetration of a sexual nature should be included in the definition of rape.

The committee also increases the quantum of punishment for rape i.e. rigorous imprisonment shall not less than 10 years and shall also be liable for fine.

The intention such amendment is to reduce in rate commission of rape by awarding more strict punishment but according to report of the National Crime Records Bureau (NCRB) - The data show that the number of rape cases increased from 2,487 in 1971 to 32,559 in 2017 — an increase of 1,209 per cent. Conviction rate in rape cases is as low as 32.2 percent at the national level. It means that the objective of amendment is not achieved there is a lack of proper implementation of existing law.

Why death sentence is not a solution –

The death sentence is not the ultimate solution it does not mean that death is not a solution to curb this offense. We need to amend our penal provision and award death sentence for habitual offenders of rape so that the graph of rape rate will fall.

Before discussing why the death sentence for the offender is not a proper solution, we need to understand the theories of punishment-

In India we are following the reformatory theory of punishment, According to this theory, the object of punishment should be the reform of the criminal, through the method of individualization. It is based on the humanistic principle that even if an offender commits a crime, he does not cease to be a human being. This theory would consider punishment to be curative or to perform the function of medicine. According to this theory, crime is like a disease. This theory maintains that you can cure by killing. The ultimate aim of reformists is to try to bring about a change in the personality and character of the offender, so as to make him a useful member of society. *Narotam Singh v. State of Punjab*³ the Supreme Court has taken the following view-

“Reformatory approach to punishment should be the object of **criminal** law, in order to promote rehabilitation without offending community conscience and to secure social justice.”

At another hand, under the influence of emotions, we are demanding death sentence for the offender which is based on the deterrence theory of punishment. Under the deterrence theory of punishment it believes that "infliction of severe punishments with punishment with a view to preventing the offender from committing the crime again". This theory suffering from several criticisms , That it has proved ineffective in checking crimes and also that excessive harness of punishment tends to defeat its own purpose by arousing the sympathy of the public towards those who are given cruel and inhuman punishment. Hardened criminals are not afraid of punishment. Punishment losses its horror once the criminal is punished.

In the case of *Bachan Singh v State of Punjab*⁴ , wherein a Constitutional Bench with a 4:1 majority upheld the constitutional validity of death penalty and the scope of the provision which enabled the imposition of death penalty. Justice Bhagwati took a dissenting opinion and held that the death sentence is unconstitutional and violative of Articles 14 and 21 of the Constitution of India. laws' which are to be used to avoid and prevent people from committing such offenses and not to take the life a person using the same laws. The State has no right to take the life of a person. India according to me should abolish death sentence.

India is country of 1.3 billion peoples, it is practically very difficult to hang the convicts . if we analyzing the reports we found

Statistics show that “53.2% of the rape cases filed between April 2013 and July 2014 in the capital were found false” – according to, The Delhi Commission of Women (DCW).⁵

³ AIR 1978 SC 1542

⁴ *Bachan Singh vs.State of Punjab* (1980) (2 SCC 684)

⁵ Sign the Petition. (n.d.). Retrieved from <https://www.change.org/p/supreme-court-of-india-prosecute-false-rape-accusers>.

This above statistics data clearly shows that if we introduce more strict law in our system it will cause a threat to those who are innocent it is violative of the principle “let hundred guilty acquitted but one innocent should not be convicted”

Conclusion

In conclusion I feel that we should need to implement the existing law in better way so, that the conviction rate in case of rape will increase instead of making our law more harass. The better implementation of law will not only helps to curb the frequency of rape but also helps to make our society more peaceful. Demanding more strict punishment for accused and speedy justice under the influence of emotions will astray the objective of our judicial system.

“I don’t think justice can ever be ought to be instant, and justice must never ever take the form of revenge . I believe justice loses its character of justice if it becomes revenge,”

---- CJI S.A BOBDE