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Sexual Violence against Women in India

An Analysis

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ABSTRACT

A physiotherapist in India became a victim of a brutal gang rape on December 12, 2012. When the victim was surrendering to her injuries, the incident became the highlight for the promotion of "Sexual Violence Against Women." India is considered as the "Rape Capital" of the world but it is strange how statistics show that the number of reported rapes in the United States is thirteen times higher than what is reported in India especially if we compare the size of the population of both the countries. We will just not talk about rapes, but studies have concluded that in India women suffer to gain social equality, they are paid less at the workplace in comparison to their male colleagues, they suffer physical and domestic violence and are exposed to mental, social and economic violence.

Often Rape survivors are excommunicated from the societies and their families refuse to accept them to avoid shame and disregard of the society. Victims are also considered tainted and sully which leaves them unsettled and unmarried for their entire life. Victims also tend to incur heavy financial bills for their treatments after the assault. Various discriminations, domestic violence, mental harassment, limited education opportunities, and low political representation has made women vulnerable in India.

Keywords: *Violence, Harassment, Discrimination, Assault, Patriarchy, Prejudice, Victim, Survivor, Equality, Punishment.*

I. INTRODUCTION

Rape can be defined as an act of dominance over women which maintains a gender-biased society in which women are the underprivileged victims and targets of sexual aggression from men. The National Crime Records Bureau in its study provided that rapes in India are now seventeen times more than what it used to take place earlier.² One of the prominent feminist writer Jessica Valenti, in one of her research studies, mentioned the concept of 'Rape Schedule' in which she described the minor changes women undertake to escape the risk of rapes. Such

¹ Student of Amity Law School, Noida, India.

² "Sexual violence pandemic in India: Rape cases ... - India Today." 13 Dec. 2019, <https://www.indiatoday.in/diu/story/sexual-violence-pandemic-india-rape-cases-doubled-seventeen-years-1628143-2019-12-13>. Accessed 19 Apr. 2020.

actions are often unconscious such as avoiding late-night walks on some streets, wearing short clothes or coming out alone late at night. These actions itself emphasize the very fact that women are always under some kind of significant threat which never makes her feel safe from the danger.

The rate of sexual violence is examined to be higher where masculinity dominates feminity. Often in these societies, young boys are taught to hide their emotions and advertise their sexual power and potency whereas young girls are instructed to be weak and dependent over a man for her entire life. These girls receive less education compared to their male counterparts which in turn creates a huge gap between male and female literacy.

Women in India face discrimination even before their birth through female foeticide. Cultural and social norms of the society consider male children more potent in terms of monetary and social growth whereas girl child is considered as a financial burden due to prevailing dowry traditions. These criminal acts in the name of traditions often cause innocent killings in the form of suicides by young girls or become one of the major reasons for domestic violence in the houses due to nonpayment of the demanded wealth.

One of the women rights activists has stated that these cases are not even reported. In India police, administration, politicians consider sexual violence as loss of integrity that loss of consent. This becomes one of the major reason to allow inter-caste relationships to mingle with rape and cause 'Honour killings' and simple patriarchal restrictions which are hidden as protecting women from rape.

Today, if we have stringent and rasp rape laws it is because of the painful and disquieting experiences three women underwent in India. The most celebrated Criminal Law Amendment Act,1983 came into force because of the Mathura Rape case, The Sexual Harassment of Women at Workplace Act 2013 was enacted in the aftermath of the Vishakha case and the current Criminal Law Amendment Act,2013 was a consequence of the Nirbhaya Case.

Tukaram v. State of Maharashtra - Mathura Rape Case:

In 1972, a sixteen-year-old girl named Mathura was raped in a police station. When Mathura's family filed a complaint against the two officers, the sessions court acquitted them because she eloped with her boyfriend as she is 'habituated to sexual intercourse' and hence can not be raped. Further, the High Court held that a coerced and helpless surrender can not be justified as free will or consent. The Supreme Court held in its judgment that since Mathura did not cry for help her allegations are untrue and acquitted the convicts. Her consent can not be just called a passive submission. This judgment prompted a campaign for the amendment in the rape laws

which gained a lot of media publicity and mass protests.

The campaign attempted to ensure the women's movement which tried to challenge the prevailing laws of rape, the concept of consent and understanding of social justice. The motive of the campaign was just not based on equality but also to bring a significant change in the outlook of patriarchy. The idea was to connect the relationship of violence faced by women with the systematic oppression of women by men. One of the major plunders of the campaign was to redefine 'consent' in a rape trial. The highlight of the Mathura case was how difficult it is for a woman to prove that she did not consent to have sexual intercourse 'beyond reasonable doubt' under the criminal trial.

The judgment made by the Supreme Court can be interpreted as the absence of physical injuries and passive submission is implied consent. The major demand from the campaign was that the onus of proving the consent should be on the accused and not prosecution. This means that if the woman in a rape trial states that she did not consent for the sexual intercourse it should be presumed by the court that she did not. The second demand that was raised by the campaign was that the sexual history and the character of the women should not be used as the evidence in a rape trial.

The government responded actively to the campaign and the law commission was set up to study the demands. In return, the law commission included both the demands in its recommendations.

However, on the presentation of the bill in the parliament in 1980, none of these recommendations were included regulating the police power. The demand for not using a woman's sexual history and her character as evidence was excluded from the bill. The onus of proving the guilt by the accused was partially acceptable, i.e., only in the cases of custodial rapes.

The important provisions that were amended were:

1. A new section was included which criminalized the sexual intercourse with or without the consent in the custody of a policeman, public servant, warden of jails, remand homes, and managers of public hospitals.
2. The minimum punishment was laid down to ten years in case of custodial rapes, gang rapes, rape of a pregnant woman and girls under 12 years of age. The minimum punishment in other rape cases was laid down to seven years.³

³ "The Birth of Legislation: The Mathura Rape Case - Amie Legal." 8 Oct. 2018, <https://amielegal.com/the->

These reforms in the law had very little impact on the tradition of rapes in India. After the ten years of the Mathura rape case, the Supreme Court reduced the minimum term of ten years imposed on the police officers found guilty of a young woman's rape to a maximum of five years. Additionally, in a recent Bhanwari rape case judgment, inherent biases on the part of the judge were highlighted.

Vishaka and others V. State of Rajasthan and others:

This case is considered as one of the landmark cases in the history of violence against women. This case outlined the importance of laws to deal with sexual harassment raised by working women. This judgment was a result of a gang-rape of Bhanwari Devi who was a social worker in Rajasthan on September 22, 1992.

The trial court acquitted the convicts stating that a husband can't watch her wife submissively gang-raped. Even the Supreme Court did not respond to Bhanwari's appeal. Therefore, Vishakha which is an NGO and a group of other women filed a PIL in the Supreme Court for the infringement of fundamental rights of working women under the article 14,19, and 21 of the Constitution of India.

In August 1997, the Supreme Court in its verdict defined sexual harassment at the workplace and gave strict guidelines to the employers to deal with the complaints of sexual assault at the workplace. Now it is a newly formed committee to resolve the complaints of victims of sexual harassment popularly called 'Vishakha Guidelines.' The guidelines were not incorporated until 2013, it is still considered as a significant legal victory for women at the workplace⁴.

State v. Ram Singh & Ors-Nirbhaya Rape Case:

The recent criminal law amendments in 2013 were the result of the brutal Nirbhaya case which occurred on December 16, 2012. The country was extremely angry at the failure of laws to check such extreme violence. This incident haunted many and led to huge protests.⁵ Under tremendous public pressure, the government constituted a committee under Justice J.S Verma. The submission of this report carved the way for better justice and enhanced punishment in cases of brutal aggravated sexual assault. The reports led to the amendment of Indian Penal

birth-of-legislation-the-mathura-rape-case/. Accessed 19 Apr. 2020.

⁴ "Vishaka & Ors vs State Of Rajasthan & Ors on 13 August 1997." <https://indiankanoon.org/doc/1031794/>. Accessed 20 Apr. 2020.

⁵ "Nirbhaya rape case: What happened on that dark fateful night" <https://www.mid-day.com/articles/national-news-nirbhaya-rape-case-verdict-flashback-dark-night-of-december-16-2012-delhi/18226167>. Accessed 20 Apr. 2020.

code, Indian Evidence Act and Code of Criminal procedure.

It brought a huge change in the definitions of rape, gang rape, voyeurism, and stalking. It further emphasized on the new sections of sexual harassment at workplace and acid attacks. The committee report strictly mentioned that rape should be de-lined from the societal measures of shame and honor. The rape should be considered as an assault and hurt to the women's right to bodily autonomy. Other recommendations were:

1. Punishment of rape: The suggested punishment for rape was rigorous imprisonment for seven years, for causing death or vegetative state should be rigorous imprisonment for not less than twenty years which can be extended for the rest of the life. Gang rape, it says should be punished with the rigorous imprisonment of 20 years and gang rape with death may extend to life imprisonment.
2. Punishment for sexual offenses: Panel acknowledged the need to curb these offenses and recommended: voyeurism will be punished with up to seven years, stalking or repeated offenses of contacting someone will be sentenced for a term of 3 years, Acid Attack criminals will be termed for seven years and trafficking will be punished with rigorous imprisonment for seven to ten years.
3. Registering complaints and medical examination: Every complaint should be registered of rape that comes to the knowledge by the police. Any officer who deliberately tries to ignore registering the complaint or tries to abort the investigation will be committing the offense and will be punished as prescribed. The Protocol has been assigned to the professional medical teams for the assessment of the victims which should be followed.
4. Bill of Rights: A new bill should be introduced for women which should entitle a woman a life of dignity and sense of security. This bill should also include a clause that gives a woman wholesome sexual autonomy concerning her relationships.⁶

II. CONCLUSION

Violence against women is so prevalent in India that only strict measures can curb this growing crime. Some important changes that we can bring in the system are:

1. School curriculum should inculcate programs to shape the attitude of children.

⁶ "Justice Verma Committee Report Summary | PRSIndia." <https://www.prsindia.org/report-summaries/justice-verma-committee-report-summary>. Accessed 20 Apr. 2020.

2. Workplaces should take strict actions on the employers or employees who initiate sexualized jokes.
3. Officials, politicians, and society should not blame women for their work hours and dress for a criminal wrong done against them.
4. The government should initiate setting up a specialized unit that bears trained officers and a medical team that deals with sexual crimes.
5. Easy access to psychologists, doctors, and the forensic team should be made available for the rape survivors so that they feel confident about disclosing the wrong done to them.
6. Government campaigns should raise awareness about the dangers of meaningless traditions such as dowry.
7. The government should take strict measures against the circulation of images/videos that advertise violence against women in pornography, wrestling or any other media.
8. Marital Rape should be criminalized.
9. Strict measures should be adopted to curb female foeticide.
10. Rape survivors should get the government's financial support.⁷

⁷ "Sexual Violence - Economic Times - Indiatimes." 10 Dec. 2019, <https://economictimes.indiatimes.com/blogs/et-commentary/sexual-violence-indias-serious-problem-its-men/>. Accessed 20 Apr. 2020.