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Raising Concerns for Crime against Woman in India

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ABSTRACT

In the modern era where growth and development should be the prime concern, people are also concerned with crime and violence against woman as it is increasing day by day. The progressive society needs some progress in their mindset as well, in order to eradicate such crime against woman. The following research paper deals with woman being the victim in the society. Although there have been various laws formulated to protect woman but unfortunately the offenders get par with it. There are also various reasons for violence against woman and this has also been outlined in the paper. Despite the violence we lack for solutions regarding such. The also outline the reasonability of punishment and the theories of punishment followed in India and what should have been followed. The crux of the following paper is dealt under the sub topic of punishments for different rape provisions, categorizing two groups of punishment and also dealing with the recent amendments of the laws. The misuse of powers by the competent authority and also the demand of speedy trial for the victims has always been an issue of concern and have been outlined below as well. The proper use of power, awareness of different laws and their penal provisions, as well as a proper sense of morality and enhanced punishments for offenders which only can only put a cap to such crime and violence against woman.

Keywords: *Crime, Violence, Woman, Rape, Amendments.*

I. INTRODUCTION

With From the dawn of civilization till date, the patriarchal mindset still persists in many parts of the country, although under the Constitution of India, woman are given with the right to equality, right to expression as well as right to education. The legislature has come up with various kind of laws in various domains protecting their rights but unfortunately again, the patriarchal mindset pops up. Still in many parts of the Indian society, women has not been giver their true identity. Men still consider themselves to be superior to woman. But our society should understand that men and woman are the two sides of the same coin. Women also require

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same stand front as man does. The country with so many religious norms and practices, when it comes to worshipping people (like the Hindus) pray in front of female deities like Durga, Kali, Laxmi, Saraswati but what happens in the actual play of life? Due to the patriarchal mindset, woman in the society face many sort of discriminations. Women are still considered the weaker sections of the society. They are still believed to stay around the four walls and efficiently play the traditional roles of mother, daughters and wife. There are instances where woman are traditionally discriminated as well as not made to participate actively in family related matters.³ It is high time for that sort of mindset to diminish.

In Hinduism, there is a very interesting Paradox which happened during the time of Mira Bai (meerabai), the famous devotee of God Krishna. During the times of Mira Bai ladies were not permitted to enter the precincts of the temples, nor were they permitted to read Vedas and other sacred scriptures. It was normally presumed that ladies were meant for household work alone. Once Mira Bai sent a slip to the priest of the temple that she wanted to come to the temple and pray to Lord Krishna. The priest got infuriated and rejected the demand of Mira Bai. He also stated that only men were permitted to worship in the temple. After knowing the views of the priest, Mira Bai sent a return slip to the priest. Sooner the priest got the slip he ran towards the abode of Mira bai and fell upon her feet. He prayed for forgiveness for act committed unknowingly and out of ignorance. What was written in the slip which altogether changed the thinking of the priest! Mira Bai had just written that there is only one Karta (doer) in this world and that is God Almighty and rest all are ladies.⁴

II. WOMAN BEING THE VICTIM

“Anybody who knows anything of history knows that great social changes are impossible without the feminine ferment”

-Karl Marx

Violence against woman is day by day increasing and thus it has now emerged as a crucial social problem in India. Violence is not only physical but psychological as well. Physical violence is defined as the use of physical force against another person that results in physical, sexual or psychological harm and includes beating, kicking, slapping, stabbing, shooting, pushing, biting, pinching, strangling, among others. Psychological violence is defined as the intentional use of power, including threat of physical force, against another person, that can

³Olivier, *The Situation of Woman in India*, Humanium (Oct 1, 2020, 12:00 P.M.), <https://www.humanium.org/en/situation-women-india/>

⁴Vijay Kumar, *Karta Creator of Cosmos*, God Realized Org., (Oct. 05, 2020, 04:32 PM), http://www.godrealized.org/hindu/hindu_women.html.

result in harm to family life, livelihood, physical, mental, spiritual, moral or social development and includes verbal abuse, bullying/mobbing, harassment, intimidation and threats.⁵

According to the National Crime Record Bureau, India, there is one dowry death in the country every 78 hour act of sexual harassment every 59 minute, one rape every 34 minute, one act of torture every 12 minute and almost one in every three married women experienced domestic violence.

Studies from India reported violence in 19–76% of women 75%–76% in lower caste women; 42–48% in Uttar Pradesh and 36–38% in Tamil Nadu; and 19% in an urban slum community of childless women. In Western India, 15.7% pregnancy-related deaths in the community series and 12.9% in the hospital series were associated with domestic violence. In Uttar Pradesh, 30% men reported beating wives. 22% of woman of childbearing age from a potter community were physically assaulted. 34% of those physically assaulted required medical attention.⁶

The population-based, multicenter based collaborative project of the study of abuse in the family environment (India-survey of abuse in family environment) was established in seven sites in India. It looked at the association with poor mental health. A total of 9938 women participated (from rural, urban slum, urban non slum areas). 40% reported experiencing any violence during their marriage. 56% had self-report questionnaire scores indicating poor mental health.⁷

III. REASONS FOR VIOLENCE AGAINST WOMAN

In this society there are many socio cultural factors as well, which disfavors the living of women. Women have never been considered as superior to men. There are many roles, which the society still considers, is only meant for men and not women. Due to advancement, when women try to perform such roles, then in many parts of the society they stand as a mockery because still the orthodox mentality of people prevails in certain parts of the country. Today woman in India are trying to be dependable of their own, but the people in the society have nurtured themselves in such a manner that woman became the victim of violence.

The violence caused against women is due to various causes and among them, the one to be mentioned first, is alcohol. In each and every cases of violence against women are has been quite evidently found that, alcohol has been the common denominator for the commencement

⁵Dipti Jain & et al., *Violence against Woman in India*, RRH., Nov. 2004, at 1, 2.

⁶ Press Trust of India, *Rapes in India: 94% offenders known to victim, every 4th victim minor*, India Today, (Oct. 07, 2020, 11:32 AM), <https://www.indiatoday.in/india/story/rapes-in-india-offenders-victim-minor-data-ncrb-1635691-2020-01-10>.

⁷ Indira Sharma, *Violence against woman: Where are the solutions?*, Indian J Psychiatry, Apr.-Jun. 2015, at 2, 3.

of the crime. The alcohol consumption reduces the ability of an individual to interpret his acts and therefore such things leads to grave consequences.

Mentality of people plays a major role in determining the rate of violence against women. If people have an equal mental setup, equal understanding to take advancement for its good, the rate of violence against women can easily be reduced. People have a negative attitude towards westernization. And this is definitely a drawback for this advancing democracy.

Today till date there are enough laws in our country, which deals with the rights of women, despite of that crime against woman is not a standstill. One of the major reasons of such can be lack of proper applicability as well as enforceability of those laws as well as the awareness among the perpetrators that if they commit such and such crime, then they must be aware of its penal consequences. There are definitely many more causes and these are few major ones which stand as a hindrance to the society.

Now if there is violence there has to be punishments for the offenders in order to eradicate such.

IV. RATIONALE OF PUNISHMENT

Punishment is a concept which has taken birth from the very prevalent practice of revenge. The revenge is a thing which is monitored by an individual against an individual whereas punishment is a part of the law that inculcates fear in a person, and in the society as a whole⁸, for the further practice of such criminal offence.

In a classical school of thoughts regarding punishments it is said that:-

- a) punishment must be attached to make the undesirable acts painful.
- b) the amount of pain shall be definite.
- c) the prospective criminals could make the calculations. in such a way so that the pain would exceed the pleasure.⁹

In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime, the conduct of the criminal and the defenseless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment fitting to the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and

⁸P. MORGAN, THE PRACTICE OF DETERRENCE 139-40 (E. Adler & V. Pouliot Eds., Cambridge University Press 2011).

⁹H. OPPENHEIMER, THE RATIONALE OF PUNISHMENT 98-101 (L.T. Hobhouse & E.A. Westermarck Eds., University of London Press 1913).

the society at large while considering imposition of appropriate punishment.¹⁰

Punishment thus is an integral part of society. It is closely connected with crime and is inflicted for the purpose of social control.

Professor Jerome Hall¹¹ gives the ingredients of punishment out of which we pick out some important points in the following manner:

- 1) Punishment is a privation (evil. pain. disvalue)
- 2) It is coercive.
- 3) It is inflicted in the name of state.
- 4) Punishment presupposes rules, their violation and a more or less formal determination of that expressed in a judgment.
- 5) It is inflicted upon an offender who has committed a harm and this pre-supposes a set of values by reference to which both the harm and the punishment are ethically significant
- 6) The extent or type of punishment is in some way related to the commission of the harm-aggravated or mitigated, by reference to the personality of the offender. his motives and temptations.

In our point of concern, certain crimes, such as rape, are so heinous and also undoubtedly an undesirable act and is increasing day by day in India. With this patriarchal, woman cannot feel safe here in their own country. Rape being one of the most heinous crimes in the world has been poorly dealt by the Indian Penal Law. With the alarming increase in sexual offences throughout the nation like the Hathras village incident (allegedly gang rape), Priyanka Reddy rape case to name a few it has become a matter of grave concern and hence the laws require some rapid amendments regarding the punishments that have been offered.

V. PUNISHMENT FOR DIFFERENT RAPE PROVISIONS

The US Supreme Court in one of the major cases cites, “We do not discount the seriousness of rape as a crime. It is highly reprehensible, both in a moral sense and in its almost total contempt for the personal integrity and autonomy of the female victim and the latter’s privileges of choosing those with whom intimate relationships are to be established. Short of homicide, it is the ultimate violation of self.”¹²

There are two main groups of sexual offences. These are sexual aggression and breaches of sexual taboo. Those in the first group consist of injuries to non-consenting victim, while in the

¹⁰Dhananjay Chatterjee v State of West Bengal, (1994) 2 S.C.C. 220 (India).

¹¹JEROME HALL, GENERAL PRINCIPLES OF CRIMINAL LAW 309-310 (2d ed. 1960).

¹²Coker v. Georgia 433 U.S. 584 at 597(1977).

second group the conduct is illegal whether or not the victim consents. The distinction is not precise because of the ambiguity of the concept of “consent”.¹³

Consent is an act of reason accompanied with deliberations, the mind weighing, as in a balance, the good or evil on either side. Consent supposes three things, a physical power, a mental power, and a free and serious use of them. Hence it is that if consent be obtained by intimidation, force, meditation imposition, circumvention, surprise, or undue influence, it is to be treated as a delusion, and not as a deliberate and free act of the mind.¹⁴

Our Indian Penal Code generally deals with the first type of sexual offence.

In recent years, the rising crime rate-particularly crime against women has made the criminal sentencing by the courts a subject of concern. Today there are admitted disparities. Some criminals get very harsh sentences while many receive grossly different sentence for an essentially equivalent crime and a shockingly large number even go unpunished, thereby encouraging the criminal and in the ultimate making justice suffer by weakening the system's credibility. Of course, it is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In imposing sentences, in the absence of specific legislation, Judges must consider variety of factors and after considering all those factors and taking an over-all view of the situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration.¹⁵

Section 376 of the IPC¹⁶ provides punishment for rape which imprisonment, not less than 7 years and which may extend to 10 years and shall be also liable to fine. The range of prescribed punishment is very large though the discretion of rewarding of the punishment is in the power of the court. The punishment is awarded on the basis of heinousness of the circumstances. Despite such there as instances when the perpetrators escape. Sometimes the cases as not even recorded in the police station and the life if the rape victim, if she is alive is shattered. Hence a mere punishment, of minimum 7 years of imprisonment cannot be justified when compared to such heinous crime.

¹³DR. DENNIS BAKER, *GLANVILLE WILLIAMS TEXTBOOK OF CRIMINAL LAW* 134-35 (4 ed., Sweet & Maxwell 2015).

¹⁴WHARTON S, *LAW LEXICON* 1013 (17 ed., Universal Law 2017).

¹⁵Dhananjay Chatterjee v State of West Bengal, (1994) 2 S.C.C. 220 (India).

¹⁶The Indian Penal Code, 1860, No. 45, Imperial Legislative Council, 1860.

The bill¹⁷ passed in the parliament after Asifa rape case, where the minimum is only increased to 10 years which again lacks in justification. In India with the increase in the number of rape cases, this minimum punishment won't work to put a massive reduction to the cases and the only probable thing which can be interpreted with the increase in the no. of rape cases is that the minimum punishment for it is too minimum.

The main objective of punishment is to create a fear in the mind of the human beings, as that can be the consequence of such crime committed. But this is very unfortunate that, there are instances where the perpetrators escape from the eyes of law, even being punished. The court does not find evidence strong enough to punish an accused and he walks free, or with nominal punishment. At present the only probable way out, with the increase in rape cases is to come up with a punishment which will restrict persons from committing such.

Sutherland and Cressey¹⁸ have mentioned two essential ideas while defining the concept of punishment as an instrument of public Justice-

- a) "It is inflicted by the group in its corporate capacity upon one who is regarded as a member of the same group. War is not punishment for in war the action is directed against foreigners. The loss of status which often follows crime is not punishment, except in so far as it is administered in measure by the group in its corporate capacity.
- b) Punishment involves pain or suffering produced by design and justified by some value that the suffering is assumed to have. If the pain or suffering is merely accidental, to be avoided if possible, is not punishment. A surgical operation performed on a prisoner to correct a physical defect is not punishment, for the pain isn't regarded as valuable or desirable".

Talking of Section 376(2) & 376C, the former speaks of the rape of a female by a police officer, public servant or members of armed forces or a person being on the management or on the staff of a jail, remand home or other place of custody or women's or children's institution or by a person on the management or on the staff of hospital or person in a position of trust or authority towards the person raped or by a near relative, gang rape, while the later speaks rape by person in authority or in a fiduciary relationship with the victim. The punishment for the first is rigorous imprisonment of 10 years which is extendable to life imprisonment and the next has a prescribed rigorous punishment of 5 years which can be extended up to 10 years.

¹⁷ The Criminal Law (Amendment) Act, 2018, No. 22, Acts of Parliament, 2018 (India).

¹⁸E. H. SUTHERLAND & D. R. CRESSEY, PRINCIPLES OF CRIMINOLOGY 256 (6th ed. 1992).

Indian government has appointed the police to check the violation to the rule of the law and the armed forces to counter those violations, both internally in some cases and externally in all cases. They are said to be the keepers of law. Now looking into the provision 376(2) of IPC, when such a person rapes a female person, be it within his official capacity, he being a keeper of law, violates it with a crime of one of the most heinous nature of all times. We expect the society to become civilized but here unfortunately the keepers of the society are not acting according to the law, or morally, in a civilized manner. And the worst part of our law is that the minimum punishment for them is only 10 years of rigorous imprisonment. The society needs police to protect rapists from committing such offence and if they are themselves committing such then they must be so seriously punished that the general population has faith on the law to protect their interest even if the keeps don't. This thing applies not only to the police or armed forces but to each and every specific person mentioned in the provision.

India follows a reformatory theory of punishment i.e. reformation of different convicted people by giving them penalty. As Hegel¹⁹ believes, that punishment as such tend to reform the offender. Also the justice system of our country is based on the principle of "Abhor the crime and not the criminal". There is also the aspect of deterrent theory prevailing in India. The legal system in India also aims for the inculcation of fear in the mind of other people by observing the punishment that is given to the convicted. But unfortunately, Indian legal system has failed to attain its aim in some way or the other. There are a number of repeat offenders of rape and the graph is increasing day by day. Hence solely following the retributive and deterrent theory of punishment is the only way out. These theories are based on the principle of "Reap what you Sow"

When Gov. Pete Wilson signed California's "chemical castration" he very righteously pointed out to the press conference that child molesters "have a drive to do what they do. As long as they have that drive, they'll keep doing it, unless we do something about it first."²⁰ In India we worship female deities, in that same land the female is being raped every other day.

For this sometimes the very old, very cut-throat punishments that were awarded to the accused long time ago is need. So that the offenders now on must have that extreme amount of fear before committing such a crime against state, against the nation and most importantly against the very female who, when in muds and straws, is worshiped, and when in blood her life gets ruined in some way or the other.

¹⁹PETER J. STEINBERGER, *HEGEL ON CRIME AND PUNISHMENT*, 77 AMERICAN POL. SCI. REVIEW 858, 861 (1983).

²⁰Raymond A. Lombardo, *California's Unconstitutional Punishment for Heinous Crimes: Chemical Castration of Sexual Offenders*, 65 Fordham L. Review 2611, 2611-12 (1997).

Human Rights commission says the offenders are also human beings and that they must not be given a brutal punishment as to effecting their life. But for once keeping the brutality punishment of the offenders committing rape aside, is it quite justified from the rape cases like that of a Dr. Priyanka Reddey in Hyderabad where she was gang raped, smothered and then burnt by four men.²¹ Also taking into account the Hatras village incident, where the girl was allegedly gang-raped, and later strangled and dragged with her dupatta.²² Such heinous crimes require brutal punishments where the deterrent and the retributive theories of punishment are the only way out. The severity and brutality of the punishment should be calculated based on the graveness of the crime committed and not based on some fixed years of imprisonment,

VI. MANIPULATION OF EVIDENCES BY THE POLICE OFFICER AND MISUSE OF POWER

Poor in this country have no say and if they cry for justice, their cries fall on deaf ears. They are made to suffer and pay by their life and liberty, when they complain against police officials.²³ Indian penal code was made by the Britishers, originally to suppress the upraise of the Indians against them. For this they have given the power to the lowest executors of law i.e. the police.

As per section 162 Cr.P.C.²⁴, statements to police not to be signed. The honorable courts by their different judgments from time to time have authenticated such authority of the police and such the police has been placed in higher pedestal than the Magistrate and are considered more reliable than such judicial officer and in the process legalizing the dominance of the Executive in the Administration of Justice.

This gives the police an inherent power to fabricate the statements. Not only such, it's a open window for the police to take bribe and let a culprit be excused in the eye of law. By this the very Indian law sets a window for the obstruction of justice and its own backwardness in the aim of attainment of a just society.

In our present concern, a statement of a rape victim can be easily fabricated under the immunity of this provision. The statement has no credibility if it is not signed by the one who gave it.

²¹HYDERABAD CASE: POLICE KILL SUSPECTS IN RAPE AND MURDER OF INDIAN VET, BBC NEWS (OCT. 06, 2020, 10:30 AM), [HTTPS://WWW.BBC.COM/NEWS/WORLD-ASIA-INDIA-50682262](https://www.bbc.com/news/world-asia-india-50682262).

²²HATHRAS GANG RAPE: INDIA VICTIM'S DEATH SPARKS OUTRAGE, BBC NEWS (OCT.. 06, 2020, 11: 50 AM), [HTTPS://WWW.BBC.COM/NEWS/WORLD-ASIA-INDIA-54335895](https://www.bbc.com/news/world-asia-india-54335895).

²³Prempal & Ors.v The Commissioner Of Police &Ors., (2010) S.C.C. OnLine Del 1315 (India).

²⁴Code of Criminal Procedure, 1973, No. 02, Acts of Parliament, 1973 (India).

The Magistrate has the obligation by law to rely upon the police findings and statements recorded by him to instigate a case. Thus if the police is fabricating a statement then it is more likely that the court is taking up a wrong case or a right case against a wrong person and harassing the subjects of law by the very provision of law.

These statements are not admissible in the court but when the Magistrate finds one in the police record then, he has the legal obligation to put the person, making the statement, on the stand and record it as a witness. If he says the same thing under oath before the Magistrate then he records the statement and makes him sign it. If the statement mismatches, the statement in the police record becomes hostile and the original statement before the Magistrate is taken into record.²⁵

Thus there is also a window for the court to make the case go against the right person. But where a person has committed a crime and wants to flee with it unpunished thus the offender bribes the police to record a wrong statement. It is also to be noted that if the recorded statement is brought out to be false, the police officer is never at fault for such grave misuse of power and attempting to obstruct the justice. There are never any departmental proceedings against a police officer for any of his actions (right or wrong) under section 162 of Criminal Procedure Code.

VII. REASONABLENESS OF TIME IN INVESTIGATION AND TRIAL

Trial in Indian courts is very time consuming and long lasting. Courts rely upon evidences which are to be collected and presented in the court by the police officer in charge of the case, here in after called as IO (Investigating Officer), for its initial trial. A police officer is in charge of many cases at a time. This makes his investigation of one particular case, as of now, rape case, time consuming. They put their effort to investigate a case as fast as possible, but their workload does not support them to the utmost. For such the evidence gets contaminated sometimes. Sometimes they get omitted and sometimes hidden by the offenders themselves. This leads the court proceedings go more slowly. The court in quest of evidence waits for a time long enough. By this time the victim, who is already in the shock, gets more depressed and harassed by the interrogation and the investigation process and the offender walks free each day in front of her eyes. Hence, in the urge of justice the system brings a perfect example of “*Justice delayed is Justice Denied*”.

²⁵Section 25, Indian Evidence Act, 1872 No. 01, Imperial Legislative Council, 1872 (India).

As in all other provision of law such as Sexual Harassment At Work Place or Domestic Violence Act etc., a special police unit must be set up, dealing with only sexual offences. They must work rapidly so the court can come to a decision as quick as possible. The offenders of the rape must also be kept away from the victim in such manner that the victim does not even see him throughout the trial and the interrogation on the victim must be just to collect the facts and not counter question her without evidence.

VIII. CONCLUSION

The quite evident fact which cannot be discarded is that, there are many legal safeguards given to women but unfortunately such are not adequate. There are various commissions as well , there are provisions in our penal code for women and there are many different acts particularly for women but the increasing crime rates is a proof that such are inadequate.

Once any sort of sexual violence is committed against women, it definitely confirms that all measures to stop violence have failed. Reaction in the form of declaration of enhanced punishment is largely an expression of being helpless and frustrated. And hence we have to put emphasis on prevention and rehabilitation.

Indira Jaising, Additional Solicitor General of India, aptly said, “It's time for India's courts to gaze inward and throw out deeply embedded patriarchal notions that stop judgments from being fair to women. Sexism within the system has to go before it does more damage in the country.”²⁶

By imposing punishment on the offenders sexual offences can be reduced but those which have a criminal mindset, who are too adamant to commit crime, for them they have no fear. These do need a change and specially the mindset of the people in the society. A revolution in the penal law is required to eradicate the society from the grave consequences of sexual violence and for this people need to become more educated, not by studies but by morals and reasoning, the mindset of the people does need a change.

Hence, concluding by quoting great words of MUHAMMAD ALI JINNAH, “*There are two powers in the world; one is the sword and the other is the pen. There is a great competition and rivalry between the two. There is a third power stronger than both, that of women.*”

²⁶ K. Rajagopal, *Yes, the Supreme Court has been floundering, says Indira Jaising*, The Hindu (Oct. 09, 2020., 04:25 PM), <https://www.thehindu.com/society/yes-the-supreme-court-has-been-floundering-indira-jaising/article22907531.ece>.