

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Victims of False Accusation of Rape

UPASNA TAWAR¹

ABSTRACT

There exists the fundamental principle of criminal law “Innocent until not proven guilty”, presumption of innocence, yet there is an image that is created in the minds of people that a victim is “a victim” and the accused is “Guilty”, what if the accused is “the victim”, victim of false accusation? A person being accused can be described as “a person or people who may be guilty of a crime and who are being judged in a court of law.” A false accusation of the offence of rape occurs more often than most people would expect. When the reasons are traced, they are mostly intentional, or based on situational factors, innocence, or otherwise erroneous based on wrong testimonies. Many argue a lot about the severe consequences of false accusations on the victim. But unfortunately, there is a dearth of good research on the consequences of false accusations of Rape. In order to address the lacuna, the current study focuses on the reasons and consequences of false accusation, psychological impact on the victim which includes societal remarks or stigma, personal and professional life, economic loss, impact on family, the gross violation of fundamental rights guaranteed by the constitution of India under Article 21 and Article 14 of the alleged perpetrator or the victim following the false accusation. An explorative study was conducted, visited various cases and statistics--the recent where a man acquitted after 20 years following false rape charges, cases of rise in false rape cases in Kerala and in various states of India. The rise in the women empowerment which is not bad at all following the long history of dominant patriarchal society but there is also a rise in the false charges which can harm society's fabric and a gross miscarriage of justice, abuse of law for different purposes, which needs to be addressed and regulated.

Keywords: *False accusations, Criminal law, rape, consequences, wrong testimonies, psychological social, personal, economic, violation, fundamental rights.*

I. INTRODUCTION

There exists the fundamental principle of criminal law “Innocent until not proven guilty”, presumption of innocence, yet there is an image that is created in the minds of people that a victim is “a victim” and the accused is “Guilty”, what if the accused is “the victim”, victim of false accusation? A person being accused can be described as “a person or people who may be

¹ Author is a student at University of Petroleum and Energy Studies, Dehradun, India.

guilty of a crime and who are being judged in a court of law.” On the contrary, there exist one of a famous saying with respect to Section 375²- “A man is guilty until proven innocent, and a woman is innocent until proven guilty.” Believe or not there exist a bias when it comes to critical cases of rape, ‘men by nature are violent, evil, dominant, so must have committed the crime.’ Society becomes the judge and does its work by judging the victim and accused by their appearances, masculine & feminine stereotypes. We live in 21st century, and it is about time when we realize that ‘Men can be soft and women can be tough’. ‘Men could be a victim and women could be the perpetrator.’ Not accusing women, but trying to make a point that, our society, & justice system must start placing both men and women at the same pedestal without judging them by the pre-conceived notions. As it relates to their basic human rights and their violation. This paper focuses on listing out the reasons of false accusations in rape cases. The psychological impact that is casted upon the victim during trail and after trial. Again, there are two stances., first, where the accused is not proven guilty and second, where the accused is proven guilty. The first one causes a great damage to the victim’s mental health, as a consequences of pity from the society, it deteriorate one’s persona, which in turn makes it extremely difficult for them to make a fresh start. The latter one is critical, it again has an implication and this is where the question of rights becomes relevant. Instances of gross miscarriage of justice or testimonial injustice threatens the rights, where the accused is proven guilty due to various reasons like, victim’s confession, or evidences proven against the accused. The instance of the recent case in news where a man acquitted after 20 years following false rape charges.

Accused is an “accused” not “guilty.” The word that creates the problem is “victim”, it immediately creates the image in the minds as, “Victim” as “innocent.” And this naming pattern is the first stage where the rights of the “victim of false accusation” starts to hit the bedrock. We talk about natural justice all the time but at the end of the day we all are humans and so are incapable of escaping the evil called “bias” and fails to notice that it is deeply rooted enemy of the person who is in the cornerback. Yet, it is not difficult to escape it, everything starts and ends with the society and we can cure this mind illness by reforming the society. It really is about time to let go of the traditional notions, stereotyping and start seeing everyone as humans. That way the rights would stay protected from the evils of violation. If the issue of false accusations is tackled, it will be beneficial for both men and women, many a times in the genuine cases of rape, women were cornered by the phrases “women is taking advantage of women favoured laws”, “women using her label of a *women*” It gets difficult for them at every

² Indian Pen. code § 375.

stage till the case is solved. The mentioned phrases leaves a distaste on the laws made for women because of issue of false cases.

II. DEFINITION OF VICTIM, ACCUSED, FALSELY ACCUSED

The offence of rape is Unique and distinctive it is a violent crime so full of controversy, so intertwined with conflict and sexuality politics. According to Sir Matthew Hale's 17th century opinion³ rape *"is a readily proven and impossible allegation to be defended by the guilty party and that rape complainants, never so innocent, have been prominently portrayed in the judicial response to rape."* Many jurisdictions in the world have talked at length about how difficult and challenging it is for an accused man to defend himself from any false accusations, on the other hand how easy it is to corner the alleged men for the harassment accusations. The matter that needs focus in the sphere of Rape cases is false statements, blindly trusting victim's accusations leads to gross injustice to the person accused. The claims could be out of vengeance or other reasons. Moreover, with the latest 2013 criminal law amendment in India, the probability of fake or false rape complaints under the excuse of one or other has increased. The Police had found 2,875 cases in 2018 to be false.⁴

Media also has a big role to play in each cases, they are the first who labels someone as "a victim" and someone as "an accused". Thereby, creating an image in the minds of the public that the victim is innocent and the accused is guilty no matter what. Just like this, instead of offering the public the truth in the area, the media promotes certain practises, that highly affects the trial. Even sometimes the media gives its own conclusions.

One of the reasons that can be made responsible for the diversity in prevalence of false cases could be the raw meanings and definitions of the words that are used to refer the parties. Like "victim", "Accused". This particular part discusses the definitions of the mentioned words.

(A) Victim

In the **Indian** legal framework, the term **victim** is **defined** under Section 2(wa)⁵ of the CrPC, 1973 as *"a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression **victim** includes his or her guardian or legal heir."*

The term victim starts the factor of biasness. Societal sympathy due to the labelling of "victim."

³ Asha Rani Rawat, *A Study on Rising Amount of Fake Rape Cases in India*, PALARCH'S J 17 (2020).

⁴ Shemin Joy, *Conviction Rate for Rape cases is only 27.2 %*, Deccan Herald (Jan 9, 2020, 15:51), <https://www.deccanherald.com/national/conviction-rate-for-rape-cases-is-only-272-792820.html>.

⁵ Code Crim. Proc. § 2(wa).

Rape is a cognizable offence, very strict. Thus, the confessions of victims are privileged. Another reason why the testimony of confessors is privileged is that majority of the people find it very difficult to imagine themselves confessing to something they didn't do and so they conclude that the suspect must be guilty. And this makes a victim, 'a victim.'

(B) Accused

Accused is a person who has been charged of committing a criminal offence. It is all allegation till the charges are proved. Accused does not mean guilty.

An Accused person can be described as *"a person or people who may be guilty of a crime and who are being judged in a court of law"*⁶ A person who is believed to be guilty of a crime he did not commit can be said to be falsely accused.

The Black Law's dictionary defines "Accusation" as *"A formal charge against a person, to the effect that he is guilty of a punishable offense, laid before a court or magistrate having jurisdiction to inquire into the alleged crime."* We have laws that governs the rights of the accused, but once a person is accused of an offence of rape, people tend to corner that person. They make their own judgements and declare the accused as guilty. Society plays a big role in isolating the accused.

(C) Falsely Accused

There is a usage of a broad range of definitions of the term false accusation. According to Wall and Tarczon *"an accusation is false when an individual gives intentionally or unintentionally an inaccurate version of the sexual abuse."* According to Saunders (2012) *"a false accusation as: An accusation containing falsehoods: a generic, all-encompassing definition capable of incorporating both the sexual abuse that did not happen (the false complaint) and the sexual abuse that did not happen the way the complainant said it did (the false account)"*⁷

The accused could be seen as a victim, as false accusations are the mirror of true accusations. We can relate it in the case of false accusations whereby the "victim" is the perpetrator and the accused is the "actual victim. As a consequence, the alleged perpetrator turns out to be the victim, who in turn experiences the negative consequences of being falsely accused.

III. REASONS OF FALSE ACCUSATION

When we look up for reasons there are plenty, majority of them tend to be personal. But we

⁶ Cambridge dictionary (2nd ed. 2016).

⁷ Saunders, 2012, p. 17. (Saunders, C. L. (2012). The Truth, the Half-Truth, And Nothing Like the Truth, British Journal of Criminology, 52(6), 1152-1171.)

can closely bi-furcating them and they can be; deliberate or non-deliberate deceptions.

(A) Deliberate deception

The alleged victim may have a lot of personal motivations to accuses a person of rape. Basically, there are lies on which the accusation is based. There is an element of malicious motive as the complaint is consciously made. According to De Zutter⁸, recognise eight distinct categories in total:

- Material gain: An alleged victim may accuses a person to receive money, professional promotion or other material benefits.
- Producing an alibi: In order to cover up other behaviors relating to being late or absent to an appointment false allegation might be made.
- Revenge: It is very personal in order to retaliate against a disliked person by accusing him and causing a damage to reputation, freedom or finances.
- Attention: Some tries to an attempt to receive any kind of attention be it positive or negative, by anyone to become a centre topic of discussion etc. This category involves two types of complainants. Firstly, the complainant who want to get medical attention/medications and secondly, who want to get attention and sympathy from authorities and people in the social environment. There are additionally cases in which the justification a dishonest complaint is a specific interest, for example, winning a guardianship/custody case or organizing the care parental access, or coercing for all sort of purposes (cash, better work position, and so forth)⁹
- Sympathy: a special kind of attention-seeking whereby the complainant tries to improve a personal relationship with a specific individual. Gaining sympathy, which involves getting social recognition, and using victimization as an explanation for own problems¹⁰
- 'A disturbed mental state'; this may include false memories ("sexual hallucinations") or pathologic lying. Mental illnesses that could influence the truthfulness of a statement could be personality disorders for example antisocial, borderline, histrionic, a delirium, a psychotic disorder with or without hallucinations or delusions, dissociation, a reduced mental capacity. All of these makes it hard to understand the nature of sexual acts and a desire for attention/sympathy which is caused by symptoms of the condition

⁸ De Zutter, *Motives for filing a False Allegation of Rape*, INTERNATIONAL ACADEMY OF SEX RESEARCH **47** (2): 457–464 (February 2017).

⁹ Tessa G. van der Putten, *Consequences of Being Falsely Accused of Sexual Violence: Focussing on Someone's Social, Personal and Economic life*, TILBURG UNIVERSITY (AUG 25, 2016).

¹⁰ Kanin, *False accusations of rape: Archives of Sexual Behavior* E. J. 23(1), (1994) 81–92.

- Relabeling: Sometimes there is a relabelling of consensual sex as 'rape' by the police, because of its 'disappointing or shameful character'. *“Sometimes regretted sexual activity that was consensual but unwanted, will afterwards be relabelled by the complainant as rape”*¹¹ In the case of regret and relabelling, the alleged victims are often convinced by others, to file a false accusation.
- Forced/ Regret: It happens in the case of regret sexual activity that was consensual but unwanted¹²; this could happen, for example, when both parties were intoxicated before they have sexual contact. Many a times a forced case is filed by the alleged victim's guardians when they discover that there is a relationship between two individuals, they put the complainant under pressure to file an allegation. After having had consensual sex, the alleged victim experiences negative feelings of disgust, shame, and sorrow; family and friend convinces that the encounter is a rape and put the complainant under pressure to file an allegation.

When there is a deliberate false accusation of rape, it is considered a criminal act, and prosecution of the accuser is possible.

(B) Non deliberate Deception

When a person is being accused non- deliberately, it could be due to a blur of memories due to an intoxicated state or any recovery of memory therapy. For example, false memories¹³, the alleged victim come to believe that the person accused could have committed the offence of rape and in absence of evidence, the confession by the alleged victim is prioritized. The memory of the victim deceives themselves and they tend to confuse the real offender to the accused. Sometimes during trial when the victim is confused regarding memories, the co-witnesses helps them in recollecting the memories and this way the alleged victim with a conformity accuses the accused.

This is an unconscious type of deception, and the element of malice is absent, which is an important element of crime.

IV. CONSEQUENCES OF FALSE ACCUSATION

As mentioned, the victim can be the perpetrator and the alleged perpetrator can be a victim. Thus, it's instrumental to consider the consequences of false accusation. It takes two instances,

¹¹ De Zutter et al., 2016.

¹² De Zutter et al., 2016; Saunders, 2012.

¹³ Chris French, *False memories of sexual abuse lead to terrible miscarriages of justice*, THE GUARDIAN. R (2 Dec, 2018).

during trial and after trial.

1. At the time of trial: While going through the trial the person falsely accused of rape faces a lot of consequences. It not only includes psychological consequences and stigmatization, but also other consequences like loss of employment, broken families.

2. After trial: It can be bifurcated again in two instances; Convicted and acquitted. The first is the worst-case scenario, where the person falsely accused ends behind the bars, and no one knows the truth. We can point out the gross miscarriage of justice in this case. It can happen due to many reasons as discussed before. A study conducted by Huff in 2002 has investigated the psychological consequences of being falsely accused of a rape and then proven guilty and end up in prison. In the term of imprisonment these victims of false accusation experienced fear, trauma and anger. Some even experienced being victimized by the other inmates during their time in prison, especially those who were accused of sexual abuse of minors.¹⁴ These offenders hold the lowest position in the prison hierarchy and they get victimized more than other prisoners. The second one, is also worse, the pity from society causes great damage to the person's mental health, a fresh start becomes a daring dream. Also Include personality change *"like moodiness, loss of sense and purpose, estrangement, loss of capacity for intimacy, being traumatized, which can lead to Post-traumatic stress disorder (PTSD) caused by violence, threats and self-protection, which can result in being aggressive and intimidating"*¹⁵ Another consequence for the alleged perpetrators is having problems in their social life. Even after being acquitted some people still remain suspicious and distrustful and the way they behave with the victim impacts the victim's mental health.

V. CASES

(A) COMPLAINT UNDER PRESSURE

Kerala High court expressed its displeasure in a recent case where a false complaint is filed by a woman against a health inspector¹⁶. She claimed that she was being called at the health inspector's residence to collect the corona virus negative certificate. She further contended that she was tied and was abused. Consequently, the health inspector was arrested and also suspended from his service. She filed against him under section 323(voluntarily causing serious

¹⁴ Huff, *Wrongful conviction and public policy: The American society of criminology 2001 presidential address*. *Criminology*, C. R. 40(1), 1-18 (2002).

¹⁵ Grounds, *Psychological consequences of wrongful conviction and imprisonment*, *CJCCJ J.* 46(2), 165- 182 (2004).

¹⁶ Shivam Sharma, *False rape cases increasing because of societal norms on honour or as getting back*, India Legal (Dec 10, 2020), <https://www.indialegallive.com/cover-story-articles/il-feature-news/false-rape-cases-victim-blaming-victim-shaming/>

injury), section 506 (criminal intimidation), 376, 376(2)(n) and 376 C (b)(Rape) of the Indian Penal Code, 1860.

Later she filed an affidavit in which she stated that it was a consensual sex and no rape has occurred. Justice PV kunhikrishnan observed from the affidavit that this particular case was covered by media widely in the state and almost everyone in the state knew about this case. The case was based on the report that when she approached the health inspector for the covid-19 negative report the mentioned inspector committed rape and because of this strong and serious allegation the health inspector was refused bail. Also, she stated that she was brutally tied. Later on, she came up with a notary attested affidavit and stated that nothing like such incident has occurred and it was a consensual sexual intercourse. Moreover, in that affidavit she stated that she gave such a statement about the health inspector to the police because she was pressurized from her relatives." Investigation was ordered to the police commissioner in this particular case and the court disposed of the third bail application by the health worker.

(B) False case- a case of an alibi

Another case happened in Chhattisgarh kawardha district.¹⁷In this particular case a false complaint was filed by a 14-year-old tribal where she Complained that she was gangraped. On November 22nd 2020 she left her home saying she is going to meet a friend. But she didn't return in the night and the family searched for her and around 11:30 when they were on their way to file missing complaint in the local police station she returned home and she said that she was being gangraped by 4 unidentified men.

Following the complaint, the police started tracing the unidentified suspects in 7 teams. But they found nothing. Later on, the police figured out that the girl and her male friend both were minors and they were also giving contradictory accounts of the incident. At the later stage during examination, they confessed that they were in a relationship and a decided to meet at a PG College Ground. It was almost dark and she was very reluctant to go back home so the boy suggested and they both cooked up story of a gangrape.

It is very difficult to trace about false rape cases but also it cannot be denied that these cases are increasing. In most of the cases it is contended that the man had sexual relations on a false promise of marriage. In such cases the so-called victim cooks up story that is followed by any monetary or personal gain or a disorder an alibi or revenge. It is very instrumental for her that her story is to be taken seriously. False cases are very effective weapon to avenge in animosity that may relate to religion or class or caste. And we can trace the scope of strict actions in such

¹⁷ Id

cases. Even if there is no punishment the reputation of the victim of false reporting of rape is very severely damaged and it becomes impossible to restore it.

It is not only about the victims of false cases of rape., but also it relates to the genuine cases of rape. Stories for any purpose by the accuser severely affects the genuine victims of rape. When these victims goes to the police station to file an FIR and at later stages of trial they face the doubtful questions about the genuine facts.

In another case earlier this year, the division bench of Justice Ashok Bhushan and Justice MR Shah of the supreme court gave a judgement acquitting a man accused of raping his sister-in-law in September 2011 in Makhdumpur, Patna. The ruling was that on the basis of the sole testimony of the victim, a rape accused cannot be convicted unless it is “absolutely trustworthy, unblemished and of sterling quality.”¹⁸

(C) Case of promise to marry and revenge

Another false case where a story of a Moga women was reported in a news where she stated that she was being kidnapped from Chandigarh and later on dumped there after gang rape in a moving car. She said that she acted as a victim in order to frame her boyfriend's wife who had got her into prison on the accusation of attempted murder by poking with HIV-infected needles. She was released on a bail after she cooked up the story. The Suspects are charged under Sections 420 (cheating), 195 (submitting false evidence to get someone imprisoned for life), 211 (false charge with intent to injure) and 120-B (criminal conspiracy) of the Indian Penal Code (IPC). The plan also involved consensual sex between Gurveer Kaur and Rohtash Kumar to make it easy to prove rape¹⁹

In this particular case the prosecutrix and the alleged accused developed a love relationship. The prosecutrix was a divorcee. She alleged that the alleged accused had promised to marry her and she truly believes him. On that account, they developed sexual intimacy and were having sexual relations. The prosecutrix, consented to have sexual relations with the alleged accused that she voluntarily admitted. Later on, the alleged accused denied to marry her she insisted him. She felt cheated and according to her, her consent cannot be taken into consideration.

The crime report was registered in the Police Station for the offence punishable under Section 376 and 417 of IPC. The alleged accused contended that the prosecutrix was fully aware about

¹⁸ Id.

¹⁹ Mukesh Yadav, *Rising Menace of False Rape Cases in India Problems and Solutions*, INDIAN ACAD FORENSIC MED. J 35 (2013).

his status. And there was no intention on his part to cheat her. There was a huge age gap between them. He was 35 while she was 42 years old. He said that the relationship was based on mutual understanding and mutual consent. And further, there was no element of promise to marry.²⁰

VI. ROLE OF MEDIA AND INDIA'S CURRENT STAND ON FALSE CASES OF RAPE

When we begin to talk about the society then we must bring about the role of media. The media often take side and give judgements of their own. They did not fulfil their simple duty of simply providing facts. The media complicate the matter. The victim blaming and victim shaming occurs when the media reflects on the traditional and conservative societal mindset. When we talk about authorities, they are also guilty of the same error. In a country like India, where majority of people follows traditional values and with the conservative mind set, the honour and status of the family is the most important. And often in a love affair cases the woman chooses the honour of the family. The honour matters the most and choosing a lover is more shameful than rape. So, in a such a society, it is easier to lodge a false report against the lover following the pressure of the family. Consequently, the men who is falsely charged has an emotional breakdown causing mental trauma. They face the stigma from the society, personal and professional life ruined. The women also suffer from guilt and depression.

A report published in 2014 by the Delhi Women Committee noted that between April 2013 and July 2014, about 53.2 % of the rape cases filed are fake. It was also included in the report that many of the people who filed sexual abuse are all misleading and with a motive of seeking vengeance, like the recent case of Vishnu Tiwari who was sentenced by trial court for life imprisonment on the charges of violating a woman, later he was found innocent by Allahabad High Court and they found that the charges were false, the complainants were driven by the motive as there exist a land dispute between them²¹. The 2019 case where a law student in Uttar Pradesh accused her of rape and sexual harassment under Section 376-C of the IPC, an offence pertaining to the abuse of one's position by a person in authority to "induce or seduce" a woman under his charge to have "sexual intercourse not amounting to the offence of rape", later on the victim turned hostile and faced perjury charges.

India's recent stand on "Sex on the false Promise marriage" is that it is considered as "Rape."²² As it involves breach of promise to marry, and the 'consent' is based on the sole promise. It

²⁰ Id.

²¹ Deepak Lavania, *P: After 20 years in jail, man found innocent*, Times of India (Mar 2, 2021, 09:54), <https://timesofindia.indiatimes.com/city/agra/after-20-years-in-jail-on-rape-charges-man-found-not-guilty>.

²² Geeta Pandey, *Why India sees sex on false promise of marriage as rape*, BBC News (Apr 19, 2019).

cannot be considered as a valid consent once the promise is breached. The promise factor depends upon intention, whether the man had a malicious intention from the beginning or the relationship soured after they had sexual intimacy. And it depends upon case to case. Quoting the statement of Delhi High Court Justice Pratibha Rani's she said "*Women use rape laws for vendetta when relationship sours.*"

VII. FUNDAMENTAL RIGHTS & THEIR VIOLATION

The *Fundamental Rights* are the basic human rights of all citizens. Part III of the Indian Constitution deals with these rights and they are applied irrespective of race, place of birth, religion, caste, creed, gender, and equality of opportunity in matters of employment.

Talking about, the violation of Article 21²³ that provides for the right to life and personal liberty and Article 14²⁴ standing tall against inequality, we must understand on what basis these rights of the alleged accused are being violated. To begin with the offence of rape, it is a serious offence, loathed by the society. It is not only a crime against the victim but also against the state. Being the most hated crime, it tantamount to the honour of a women. It is a heinous crime, that breaks the victim and her dignity. That is why the confessions by the victims in the offence of rape is given preference or privilege. And women since time immemorial has faced abuse and discrimination. Stayed in the bruising grip of the dominant, patriarchal society. Tolerated and are still tolerating the abuse in the hands of the dominant alpha male. The stereotypical mindsets and conservative approaches made women the victims of societal scurrility. Therefore, for the most obvious reasons, the testimony of confessors (victim) is privileged and accepted by the court, as it is very difficult to imagine ourselves confessing to something we didn't do and this is why a conclusion is drawn that the suspect must be guilty. This is especially compelling when a violent crime is at issue, such as Rape, the story of the victim sounds legit and it gets difficult to ignore her confession. Now, imagine the position of a person who is accused of such a crime, a victim of false accusation. A bias is formed against him, the moment he is accused of the offence. The principle of natural justice that talks about the 'Rule against biasness' appears in shambles. Bias means "*an operative prejudice, whether conscious or unconscious, as result of some preconceived opinion or predisposition, in relation to a party or an issue. Dictionary meaning of the term bias suggests anything which tends a person to decide a case other than on the basis of evidences.*"²⁵ The rule against bias ensures fair

²³ India Const. art. 21.

²⁴ India Const. art. 14.

²⁵ *Natural Justice: Rule of Fair hearing and Rule against bias*, LAW TIMES J.

November 30, 2019, <http://lawtimesjournal.in/natural-justice-rule-of-fair-hearing-and-rule-against-bias/>

procedure by excluding decision-makers who are tainted by bias, a fair hearing must be an unbiased hearing.

Article 14 guarantees equality before law and equal protection of law. It stands against discrimination and prohibits both discriminatory laws and administrative action. This article talks about laying down general proposition that all persons in similar circumstance shall be treated alike both in privileges and liabilities imposed.

Art 14 is perceived in the following patterned propositions: First, if a law confers unguided and unrestricted power on an authority it then it is considered as arbitrary and discriminatory. Secondly, if there is any discretionary power and, in its exercise, there is a discrimination then it is considered illegal. Thirdly, fairness and equality of treatment in administrative action in absence of arbitrariness.

In the false cases of rape, it is generally bias arriving out of pre-conceived notion. The Man by nature is violent, evil, and dominant. So, must have committed the crime. Judging the alleged perpetrator by believing the reports of the media, the public opinion often unconsciously leads a judge to create an unconscious bias in his mind. Therefore, the evils of bias have the power to vitiate a fair trial.

Article 21, of the Constitution guarantees the right to life and personal liberty, right to life with dignity²⁶, in a civilized society, respect or reputation is a basic right, which stands being violated. The disgust and humiliation the society throws at the accused shatters his dignity. Then comes the right of liberty. From the initial stage of being standing as an accused in the accused box till the delivery of judgment, the accused is being deprived of his liberty. Not to mention the issue of delays in our justice system. Cases remains unsolved till many years and the alleged accused has to face it all during whole trial, the doubt, disgust and humiliation, the economic loss. If the accused is proven not guilty and is acquitted, Society pity after acquittal and the injustice is corrected by compensating the victim. The compensation he receives would not bring back the time he lost facing the trial, would not restore his reputation completely, would not set his mind free. Another instance is when the accused is proven guilty and is convicted but no one knows the true happening of the events, this is the worst-case scenario and instances of gross miscarriage of justice or testimonial injustice threatens the right to life and personal liberty, where the accused is proven guilty due to various reasons like, victim's confession, or evidences proven against the accused. The instance of the recent case in news

²⁶ Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597 (India); Francis Coralie v. Union Territory of Delhi A.I.R. 1981 S.C. 746 (India).

where a man acquitted after 20 years following false rape charges. The constitution guarantees the right of providing justice, but it appears that the phrase “*justice delayed is justice denied!*” becomes a reality in fake rape cases.

Part IV of the Constitution talks about the Directive Principles of State Policy, these are the directions given to the state and the duty of the state is to guide the establishment of an economic and social democracy, as the Preamble rightly talks about.²⁷

However, in fake rape cases it appears that the state fails to provide the protection the constitution guarantees, following the biasness against the alleged perpetrator who actually is a victim, the right life and liberty stands being violated.

VIII. OPINION

With the rise in the false rape cases the author observed certain critical consequences. To begin with it, we are trying to fight with the issue of Stereotyping and eliminating the system of patriarchy. But false cases are pulling us back and instead of progressing we are going towards regression. These cases stereotype the males as every case is somehow connected to their personality. The mindset that males are masculine and are able to commit a crime shows nothing but the firm hold on patriarchy as we keep holding onto the stereotype. And because of this the efforts that are made for the progress are misrepresented. The feminists Movement in our country is still at the beginning stage. We have groups that supports women who are victimized and alleged victim get support from such group. What comes out of it is that the object of achieving equality through feminist movements weakens. People often associate their rage regarding the false cases on the feminist movements and it altogether weakens the efforts of feminism. The victims of false accusation who are proved to be innocent and who actually respect law and women are all seen together with those who do not respect women and law. And they altogether counted in the bunch of misogynist and chauvinist.

Media: The media is the fourth pillar of democracy. The public believes what they hear on news and usually is driven by what the reports have to say. The media influences the public a lot. The sufferings of the victim of false accusation of rape is massively influenced by the media. The hype, hue and cry it creates while reporting the crime, it must report the acquittal with the same vigour. Media has the power to somewhat restore the reputation of the victim. Though, it cannot be completely restored, as even after acquittal people remain in doubts, but to some extent media can aid in making the victim again acceptable n the society.

²⁷ BASU, DURGA DAS, *INTRODUCTION TO THE CONSTITUTION OF INDIA* 457 (15th ed. 1993).

Compensation: There are two types of acquitted victims; the first one who are poor and the other one who are financially well off. Compensation would be helpful for the victims who are not financially well off. They will get financially rehabilitated. It can be done by amending Section 357²⁸ of Code of Criminal Procedure, 1973. It is time to take the false cases seriously, so another option could be adding a separate section in the code for compensating the acquitted victims. The lost dignity, honour and status they held cannot be restored but it can be compensated, that would help them to start afresh. The compensation must include court fees, litigation fees and other liquidated damages.

For those victims financially well off but suffered false rape charges. A case of perjury can be initiated against the accuser and the instigator, the person who forced to initiate the complaint usually, a guardian or a friend. A case can also be brought under Section 182²⁹ (false information, with intent to cause public servant to use his lawful power to the injury of another person) of the Indian Penal Code, 1860.

This way it would be a deterrence to them both. The filing of forced false cases would somewhat reduce. Anyone who thinks about filing a false rape case in order to gain personal or monetary gains would stop, as they would not want a case of perjury to initiate against them. Also, the co-witnesses who affects the testimonies would think before providing misleading facts.

There is urgent need to deal with strict action by all concern by creating awareness about consequences of fake rape cases, the burden to make people aware is more on woman activist and women rights commissions at state and national levels.

Once the compensation is given and the accuser is sent behind bars to serve the imprisonment, will somewhat ensure that the men can get back the dignity lost by them during trial. The media along with the judiciary can help restore the reputation of the victim and would help in recovering from the trauma of trial.

IX. CONCLUSION

The offence of rape is Unique and distinctive it is a violent crime so full of controversy, so intertwined with conflict and sexuality politics. The strict laws we have today are justified, as the nature of the crime is heinous. Women empowerment is the need of the hour. So, does the protection of the right of innocent victims of false cases of rapes. Due to rising false cases, the veracity of genuine cases of rape is affected. The genuine victims

²⁸ Code Crim. Proc. § 357.

²⁹ Indian Pen. code § 182.

of rape suffer, as it gets difficult to believe in the truth because of the rising in misuse of the laws that are made for the protection of women. Parallely, the basic human rights of the victim of false accusation are jeopardized. They are grossly violated when an accuser dictates a false version in front of the justice system. The innocent victims suffer in the hands of injustice. The paper discussed various reasons that leads to the filing of false rape cases that includes, deliberate or non-deliberate deceptions. Further the paper talked about the rising menace of false rape cases in India with various cases that has happened. The violation of fundamental rights of the victim has been discussed. Article 21, of the Constitution guarantees the right to life and personal liberty, right to life with dignity, in a civilized society, respect or reputation is a basic right, which stands being violated. The phrase *“justice delayed is justice denied!”* becomes a reality in fake rape cases when the victim suffers for years facing the false accusation trial. Judging the alleged perpetrator by believing the reports of the media, the public opinion often unconsciously leads a judge to create an unconscious bias in his mind. Therefore, the evils of bias have the power to vitiate a fair trial. The arbitrariness and unreasonableness of the trial violates Article 14. in fake rape cases it appears that the state fails to provide the protection the constitution guarantees, following the biasness against the alleged perpetrator who actually is a victim, the right life and liberty stands being violated. The paper concludes with the opinion of the author, which provides three models; Media influence and compensation and perjury charges against the accuser and instigator. The media along with the judiciary can help restore the reputation of the victim and would help in recovering from the trauma of trial.

X. BIBLIOGRAPHY

- False Allegations of Rape Author(s) Philip N. S. Rumney , The Cambridge Law Journal , Mar., 2006, Vol. 65, No. 1 (Mar., 2006), pp. 128-158 Published by: Cambridge University Press on behalf of Editorial Committee of the Cambridge Law Journal.
- Cohen, S., Kamarck, T., & Mermelstein, R. (1983). A global measure of perceived stress. *Journal of health and social behaviour*, 24(4), 385-396. Retrieved from: <http://www.jstor.org/stable/2136404>
- Goffman, E. (1963). *Stigma: On the management of spoiled identity*. New Jersey, NJ: Prentice-Hall (February 2017).
- Verhaeghe, M., Bracke, P., & Bruynooghe, K. (2008). Stigmatization and self-esteem of persons in recovery from mental illness: the role of support. *International Journal of Social Psychiatry*, 54(3), 206-218.
- Basu D.D , *Constitution of India* ,14th edition 2009, LexisNexis, Butterworths Wadhwa Publication Nagpur.
- Asha Rani Rawat, *A Study on Rising Amount of Fake Rape Cases in India*, PALARCH'S J 17 (2020).
- Shemin Joy, *Conviction Rate for Rape cases is only 27.2 %*, Deccan Herald (Jan 9, 2020, 15:51), <https://www.deccanherald.com/national/conviction-rate-for-rape-cases-is-only-272-792820.html>.
- Deepak Lavania, *P: After 20 years in jail, man found innocent*, Times of India (Mar 2, 2021, 09:54), <https://timesofindia.indiatimes.com/city/agra/after-20-years-in-jail-on-rape-charges-man-found-not-guilty>.
- Cambridge dictionary (2nd ed. 2016).
- Saunders, 2012, p. 17.
- De Zutter, *Motives for filing a False Allegation of Rape*, INTERNATIONAL ACADEMY OF SEX RESEARCH 47 (2): 457–464 (February 2017).
- Tessa G. van der Putten , *Consequences of Being Falsely Accused of Sexual Violence: Focussing on Someone's Social, Personal and Economic life*, TILBURG UNIVERSITY (AUG 25, 2016).
- Kanin, *False accusations of rape: Archives of Sexual Behavior* E. J. 23(1), (1994) 81–92.
- Chris French, *False memories of sexual abuse lead to terrible miscarriages of justice*, THE GUARDIAN. R (2 Dec, 2018).

- Shivam Sharma, *False rape cases increasing because of societal norms on honour or as getting back*, India Legal (Dec 10, 2020), <https://www.indialegallive.com/cover-story-articles/il-feature-news/false-rape-cases-victim-blaming-victim-shaming/>
- Mukesh Yadav, *Rising Menace of False Rape Cases in India Problems and Solutions*, INDIAN ACAD FORENSIC MED. J35(2013).
- Geeta Pandey, *Why India sees sex on false promise of marriage as rape*, BBC News (Apr 19, 2019).
- *Natural Justice: Rule of Fair hearing and Rule against bias*, LAW TIMES J. November 30, 2019, <http://lawtimesjournal.in/natural-justice-rule-of-fair-hearing-and-rule-against-bias/>
- Basu, Durga Das, *Introduction to the Constitution of India* 457 (15th ed. 1993).
