

DEVELOPMENT IN PUNISHMENT FOR HARMLESS MURDER CALLED RAPE: A STUDY

¹Dr. Jayashree khandare, ²Shivangi Sinha

Abstract

Rape in simple terminology is an act which is done without a person's concerned, and is completely against the society. It is a sexual assault which is been conducted by people or with the group of people's using physical force or manipulation, with or without the person's consent. "Rape", was a term which was first introduced in India in the "Indian Penal Code" in 1860 by Lord Macaulay which got its genesis from the 1st Law Commission Report under his chairmanship. This is one such offence which keeps on changing its shape in the statute and legislation according to the environment and as the society develops. People change their perspective, and so the law needs to be evolved accordingly. Dating back the history we had incidents such as Mathura custodial rape case, which eventually brought the Criminal Law (Second Amendment) Act of 1983. Furthermore, we had PIL's filed by the NGO's to widened the scope of the term 'sexual intercourse' as mentioned under the section 375 of IPC. Now after the 2013 amendment in the criminal law, the rape laws have tried to take a more austere step.

In this paper, we will be dealing with all these aspects in details, by using certain ratios of the cases decided. We can see that how the evolution of the law took place with the passage of time, and the amendments took place according to the societal perspectives.

Keywords- *Rape, Indian Penal Code 1860, Law Commission Report, sexual offence.*

I. INTRODUCTION

"Rape is thus not only a crime against the person of a woman; it is a crime against the entire Society. It destroys the entire psychology of a woman and pushes her into deep emotional crises. It is crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21. To many feminists and psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women."

In Bodhisattwa case, the court ruled that rape was not merely an offence under the Indian Penal Code, 1860 it was also a violation of a woman's right to live with dignity and personal freedom.

¹Assistant Professor, Bharati Vidyapeeth (Deemed to Be University), New Law College Pune

²Assistant Professor, Bharati Vidyapeeth (Deemed to Be University), New Law College Pune

Gary Scanlan and Christopher in his book has written that, “rape means insofar as the law is concerned the slightest degree of penetration by the male sexual organ of the female sexual organ which will be sufficient to constitute intercourse without anything more occurring.”

“Rape is not a merely a physical assault, it is often destructive of the whole personality of his victim. A murderer destroys the body of the victim; a rapist degrades the very soul of the helpless female. The courts, therefore shoulder a great responsibility while trying an accused on charges of rape.”

In *Santosh Mooliya v. State of Karnataka* it was stressed by the Supreme Court that a self respecting woman’s state of mind need to be consider because no woman with self respect with put her honour at stake by falsely alleging the commission of rape on her.

II. DEFINATION OF RAPE

In English law, Sec. 1, Sexual Offences (Amendment) Act 1976 gave statutory force to the definition formulated by the House of Lords in *Director of Public Prosecution v. Morgan* 1974 case.

According to Section 3 of IPC, “a man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following de-scriptions:

- Against her will.
- Without her consent.
- With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be law-fully married.
- With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupe-fying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
- With or without her consent, when she is under sixteen years of age.

Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.”

III. LEGISLATIVE FRAMEWORK:

In *State of Kerala v. Kundumkara Govindan*, the court held that the crux of offence under Section 376 IPC is rape, and it postulates a sexual intercourse. The court explained the word “penetration” states that it means access or through. It has also been held in *Ghanshyam Mishra v. State* and *Nathu Ram v. State of Harayana* that the depth of penetration is immaterial. The Supreme Court in *Prithi Chand v. State of Himachal Pradesh* held that, merely because the Doctor found that vagina admitted one figure with difficulty, it cannot be inferred that there was no penetration.

In *Madan Lal v. State of Jammu and Kashmir* the court held that if an accused strips a girl and forcibly rubs his private organ on her private part but fails to penetrate will be considered as a rape and convicted him under Section 376 read with Section 511 of IPC.

In *Pratap Misra v. State of Orisa* and *Laiq Singh v. State of U. P.* cases, women were raped and the accused were acquitted by the Supreme Court on the ground that an absence of any injury on the prosecutrix indicates consent on the prosecutrix.

The Supreme Court pronounced another like judgment in 1978 which is popularly known as Mathura Trial. In this case the Bombay High Court reserved the findings and sentenced the accused rigorous imprisonment. The Supreme Court reserved the decision of the Bombay High Court and held the accused not guilty on three grounds:

1. There were no injuries shown by the medical report and the alleged intercourse was a peaceful affair.
2. The testimony that she had raised was false.
3. Under Section 375 of IPC, only fear of death or hurt can vitiate consent for sexual intercourse and there was no such findings recorded.

After this judgment there were marked protest and it was noticed that there were no adequate laws and enough legal safeguards available to protect women who are victims of rape. The result was in *Rafiq v. State of U. P.* the Supreme Court held the accused guilty for the offence despite non-existence of any injury on the victim who was raped.

Thus the fight began for the protection of women alleged to be of unchaste character. In *Prem Chand v. State of Haryana* the Supreme Court reduced the minimum sentence of 10 years to 5 years on account of the conduct of the raped girl. The Supreme Court in *State of Maharashtra v. Madhukar Narayan Mardikar* laid down that even a prostitute has the right to privacy.

CUSTODIAL RAPE:

Criminal Law (Amendment) Act, 1983 introduced new Sections to stop sexual abuse of women in custody, care and control by various categories of person. In *Bharawada Bhoginbhai v. State of Gujarat* case the Supreme Court held that the rape is likely to ruin the prospect of the girl's rehabilitation of society for all times to come: therefore girls would not have taken such grave risk merely to malign the accused. In custodial rape it is very difficult to get any independent evidence to corroborate the testimony of the prosecutrix.

In *State of Maharashtra v. Chandra Prakash Kewalchand* case the court held that, in case of custodial rape if a woman alleges rape in custody and states that she did not give consent, the court shall presume that she did not consent.

In all the cases of custodial rape, the person takes advantage of his official position. In *Omkar Prasad Verma v. State of Madhya Pradesh* the court explained what amounts to "in his custody" and taking advantage of his official position".

The court expresses its anger in *Mohan Lal v. State of Panjab* where there was a gang rape by the teachers on the student. In this case the court held that, it became a case where a fence itself eats the crop and in such case the provisions of Section 114-A of Evidence Act, 1872 are attracted.

GANG RAPE:

Where a woman is raped by one or more persons constituting a group or acting in furtherance of common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punishable under Section 376-D of IPC.

In *Balwant Singh v. State of Panjab* the court held that where there were two persons involved, they were guilty of the offence of committing gang rape. In *Promod Mahto v. State of Bihar* case four persons were charged with raping a young unmarried girl on medical evidence. The conviction of all them was upheld without it being necessary to show whether all of them participated in the crime. Natarajan J. said:

“In such circumstances, it is not necessary that the prosecution should adduce clinching proof of a completed act of rape by each one of the accused on the victim or on each one of the victims where there is more than one in order to find the accused guilty of gang rape and convict them under Section 376 of IPC.”

In *Panibhusan Behera v. State of Orissa* the court considered that the absence of injuries on body of the victim and absence of smegma are immaterial and because the testimony of the prosecutrix was trustworthy, imprisonment was awarded in the case. In *Chairman, Railway Board v. Chandrima Das* Supreme Court ordered payment of Rs. 10 lakhs compensation to a Bangladesh national who was gang raped by the railway employees.

In *Pradeep Kumar v. Union Admn* it was laid down that to bring the offence of rape into the category of gang rape it is necessary to prove:

1. That more than one person had acted in concert with the common intention to commit rape.
2. That more than one accused had acted in concert in commission of the crime of rape with a pre-arranged plan.
3. That in furtherance of such common intention, one or more persons of the group actually committed the offence of rape on the victim.

In *State of Rajasthan v. Hemraj* the court held that it was inconceivable conceptually that a woman can commit a rape.

MARITAL RAPE:

Sexual intercourse by a man with his wife if she is not under the age of 15 years does not amount to rape. In *R v. R* the House of Lords widened the scope of criminal liability by declaring that a husband could be charged as the principal offender in the rape of his wife.

DELAY IN FILING FIR:

In rape cases, merely because the complaint was lodged less promptly that the complaint will consider a false complaint. The reluctance to go to the police is because of society attitude towards such woman. The Supreme Court in *Sri Narayan Saha v. State of Tripura* case held that in a rape case, delay in lodging the FIR does not make the case false. FIR cannot be used as ritualistic formula for doubting the prosecution's case. In

Dinesh v. State of Rajasthan case the court held that, the disclosure of the identity of victim in certain offences is punishable according to Section 228-A of IPC.

In *Zindar Ali Shaikh v. State of West Bengal* the court held that, delay in lodging the FIR and medical examination cannot be the basis for interference by the court, especially when the version of the prosecutrix was truthful.

IV. ASSISTANCE TO RAPE VICTIMS:

In *Delhi Domestic Working Women's Forum v. Union of India*, the Supreme Court has given following broad parameters for assisting rape victims:

- Complaints must be given a right to legal representation and she must be informed of this right.
- Anonymity of the rape victim must be maintained as far as necessary.
- Criminal Injuries Compensation Board must be established to enable the victim to receive financial help at the earliest.

In *Sakshi v. Union of India* case Supreme Court stated that in holding trial of child sex abuse or rape:

- Victim must not see the body or face of the accused.
- Questions of cross examination must be given in writing to the Presiding Officer of the Court and he must put them to the victim or witness in a clear unembarassing language
- The victim must allowed sufficient breaks while giving testimony.

V. SENTENCING IN RAPE CASES

The Supreme Court in *Sakshi v. Union of India* had recognized that the present law relating to rape is not adequate, legislature need to bring some amendments. After the Delhi Gang Rape Case, the President of India has issued an Ordinance in February, 2013 amending the Criminal Law in India, for giving more protection to women. The word 'Rape' has been replaced with the word 'sexual assault' which is a cognizable and non-bailable offence. By the Criminal Law (Amendment) Act, 2013, the minimum punishment for rape is 7 years imprisonment till life and fine. In certain cases, punishment is minimum 10 years imprisonment which may extend till life imprisonment.

In *Parlhad and Ors. V. State of Harayana*, the court said that the rape is an assault on the human rights of victim and attack on individuality and physical sovereignty of a woman. In *State of U.P. v. Chhotey Lal* case the court explains the deference between the term 'will' and 'consent'. The court held that if the consent is based on false reason that act will amount to rape.

In *Mohd. Chaman v. State (NCT of Delhi)* the court held that, "the crime committed is undoubtedly serious and heinous and the conduct of the appellant is reprehensible." But the court also held that this case is not rarest of the rare cases so rigorous imprisonment awarded by the court.

In *Dhananjay Chatterjee v. State of W. B.* the court observed that the imposition of appropriate punishment is the manner in which the court responds to the society's cry for justice against the criminals. It

was held that the court should keep in mind the rights of victims and her family and the society while imposing a punishment. The court confirmed the death sentence.

In *Shimbu Anr. V. State of Harayana* the trial court awarded a 10 years rigorous imprisonment for the offence of gang rape. it was also held by the Supreme Court that, we cannot compromise sentence in rape cases, it is a crime against the society.

In *Mukesh & another v. State for NCT of Delhi*, which is popularly known as the “NIRBHAYA” case, the Supreme Court held that, “the accused persons portray the mental perversion and brutality caused by them and as such the court down below had rightly awarded the death penalty to them”. Finally the Supreme Court administered a justice to the family who fought for justice since 2012 and to every woman in society by treating Nirbhaya gang rape and murder case as a rarest of the rare case and hanging the four accused till death.

VI. CONCLUSION

Rape, a minor four letter word, rips the entire life of an individual, primarily woman. It is devastating for anyone who would have to go through such a thing. It destroys completely the motto of life, takes away the urge to live. The damage doesn't end there; the defamation by the society comes as a complimentary damage for the victim. Ironically, a Nation where Goddesses are worshiped women have such state which is evident from the very fact of rise in rape cases every day. Such is the agony that even new born babies and innocent animals are not spared of this heinous act. Rape offenders, in my view shall be termed as maniacs who fail to understand beyond lust and sexuality. A woman is not merely a lust fulfilling machine nor is she child producing factory. It shall be instilled in the minds of people that there is more to a woman.

The government by imposing stricter punishments tries to instill fear in the offenders mind, but it all goes in vain when the victim does not get justice on time. The plight of the victim cannot be fathomed, she has to go through this tedious process, reminisce the horrific incident time and again. By doing this, we add on the torment of the victim instead of helping. We shall therefore, work upon a better remedial measures for cases of such nature. Hopefully, the changes made in law, can bring about the change in people's nature and behavior as well.

REFERENCES:

1. Saghir Ahmed J. observed in *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490
2. Ibid
3. Gary Scanlan and Christopher Ryan, *Introduction to Criminal Law*.
4. *State of Panjab v. Gurmit Singh*, (1996) 2 SCC 384.
5. (2010) 5 SCC Cri. 780.
6. (1969) Cri LJ 818 (Ker).
7. AIR 1957 Ori. 78.

8. (1994) I SCC 491.
9. (1989) I SCC 432.
10. (1997) I SCC 677.
11. (1977) 3 SCC 41.
12. (1970) 2 SCC 561.
13. Tukaram v. State of Maharashtra, (1979) 2 SCC 143.
14. (1984) 1 SCC 262.
15. (1989) SCC 286.
16. (1991) 1 SCC 57.
17. Section 376 B - 376 D Criminal Law (Amendment) Act, 1983.
18. (1983) 3 SCC 217.
19. (1990) 1 SCC 550.
20. (2007) 4 SCC 323.
21. AIR 2013, SC 2408.
22. (1987) 2 SCC 27.
23. 1989 SCC 672.
24. 1995 Cri Lj 1561.
25. AIR 2000 SC 988.
26. (2006) 10 SCC 608.
27. (2009) 12 SCC 403.
28. Section 375 of Indian Penal Code.
29. (1992) I AC 599
30. Karnel Singh v. State of M.P. 1995.
31. (2004) 7 SCC 775.
32. Dildar Singh v. State of Panjab, (2006) 10 SCC 531.
33. Dinesh v. State of Rajasthan, (2006) 3 SCC 771.
34. (2009) 3 SCC 761.
35. (1995) 1 SCC 14.
36. AIR 2004 SC 3566.
37. (1996) 6 SCC 591.

38. The conditions are specified in Section 376(2) of IPC.
39. (2011) 2 SCC 550.
40. (2001) 2 SCC 28.
41. (1994) 2 SCC 220.
42. Similar view was taken in *Rajiv v. State of Rajasthan* (1996) 2 SCC 175.
43. (2014) 13 SCC 318.
44. (2017) 3 SCC 719.