

ANALYSIS OF THE VARIOUS OFFENCES OF RAPE WITH RESPECT TO THE LATEST AMENDMENTS WITH THE HELP OF LANDMARK JUDGEMENTS IN INDIA

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Abstract

The Indian judicial system is comprised of Apex Court, High Court and other Courts who are considered as, "custodian and law protector" in the Indian society. The Article attempts to explore the landmark judgments of rape offences of Supreme Court of India. This paper gives a theoretical understanding of anti-rape laws and its evolution, from being a property crime to crime against the bodily integrity of a woman. This paper traces its origin from the English common law and goes on to analyze the landmark cases which brought about the progressive amendments in anti-rape laws under the Indian Penal Code. It discusses in detail the reforms made by the criminal law amendment act of 1983, 2013 and 2018. It explores the recommendations made by the Justice Verma Committee on the controversial aspects of gender neutrality, capital punishments etc. It concludes with the suggestion for change from not just the legislative level but also from the social and cultural level.

Keywords: Anti-rape laws, Criminal law amendment act, Justice Verma committee, Rape Cases, Landmark Rape Judgments.

INTRODUCTION

Rape is considered as very bad and shameful crime against a humankind, especially against a woman. Throughout most of the history women had no rights and were treated as mere property, therefore, rape was viewed as crime only in terms of property violation of another man. With the evolving time, there was shift in the cultural beliefs and norms which lead to the significant change in the definition of rape as a crime. The Indian rape laws trace its origin from the English common law and it was in 1860 when the anti-rape laws were first mentioned in IPC. But, the seventeenth-century jurist Sir Matthew Hale's comment on rape as "an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, though never so innocent", shows the prejudiced attitude of colonial courts towards the victims.¹ The assumption that the women may be lying became the reason because of which the trial courts were directed more towards proving the credit of the victim rather than proving the guilt of the accused. It was focus on her past sexual relations or her virginity which determined the outcome of the case.

Furthermore, the laws, relating to rape prohibitions in India are badly needed to be made, more stringent. It is due to the fact that the past few years, it has been observed that the rape incidents have become more brutal and heinous. The need for change in laws gathered momentum with the growth of the Women's Movement which brought about awareness and change in attitude of the society. This paper discusses several cases which led to the criminal law amendments of 1983, 2013, 2018 respectively. With regard to this, Justice Verma Committee had suggested some immediate rape reforms after the Delhi-based, Nirbhaya case. It looks closely into the several changes made in the definition and punishments of anti-rape laws. It focuses specifically on the changes brought about by these amendments in the rape laws under the Indian Penal Code. It is very sad to note that roughly all the laws and reforms in every aspect, related to women were passed after the heinous crimes took place against Women of India. For example, the Aruna Shanbaug case, proved to be a case this resulted in a debate in reforming the laws of Euthanasia. According to one of the Report of Times of India, approximately, 88 rapes get committed per day.²

LITERATURE REVIEW

The Indian Penal Code under Section 375 has specifically mentioned the definitions and provisions, related to rape and the punishments for commission of such crime. Prior to this, rape was considered as one of the most heinous crime against a woman wherein, in order to prove it, the insertion of penis into the vagina of a victim was necessary. But, due to reforms in the rape provisions, even any object, inserted into vagina now, have been taken as sufficient evidence to prove the fact that the rape had been committed.³ The very basic purpose of Section 375 of the IPC Act is to give most rigorous punishment, this

¹TOI: 2020 - India sees 88 rape cases a day;

.http://timesofindia.indiatimes.com/articleshow/78526440.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

²Samapika Mohapatra, Mathura Case

³Prachi Darji (2018), 10 Landmark Judgments by the Supreme Court of India, 16-Mar

18 (<https://www.myadvo.in/blog/10-recent-landmark-judgments-by-supreme-court-that-changed-the-course-of-indian-legislation/>)

perception has been well narrated in one of the land mark case of Justice Krishna Iyer Sir in his case, 'Rafiq Vs State of U.P. that "The murderer not only kills the body or insults a body while committing rape crime against the woman, but he actually, kills her soul forever."

Therefore, the rape Section basically means to punish such offenders who just for their instant gratification tarnish the woman's prestige.

2.1 Definition of Rape under IPC

Basically, according to Section the Indian Penal Code, Section 375, commission of a rape by a man occurs when:

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person.

Under the circumstances falling under any of the following seven descriptions: First.—against her will.

Secondly—without her consent.

Thirdly.—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.

Fourthly.—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 lawfully married.⁴

2.2 Exceptions to Section 375

Two exceptions under Section 375, pertaining to rape is as under. They are: Exception 1: In case, where any medical treatment to be done on a woman for her private parts, it shall not amount to rape.

Exception 2: In case, when there is physical intimacy or sexual relations have been made with the victim who is her wife who has crossed the age of 15 years. In this situation too, this shall not amount to rape.

⁴<https://legislative.gov.in/sites/default/files/A1860-45.pdf>

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2.3 Objective of Section 375

The very fundamental intention of Section 375 of the IPC Act is to confer most rigorous sentence, this observation has been well explained in one of the land mark case of Justice Krishna Iyer Sir in his case, 'Rafiq Vs State of U.P. that- "The killer not only kills the body or abuse a body while committing rape crime against a female, but he actually, kills her soul ceaselessly." Therefore, the rape Section essentially means to punish such offenders who just for their instant pleasure tarnish the woman's self-esteem.

2.1 Punishment

In the year, 2018, a nationwide rebel occurred to protest against the rapist who had raped and murdered, an eight-year-old child in Jammu and Kashmir which demanded the incorporation of more strict provisions in context to rape against minors. Therefore, the Criminal Law (Amendment) Act, 2018, has introduced the harsher punishment for the rapist who commits rape crime against a girl less than 12 years. As per this Act, the capital punishment in some cases or 20 years of jail provision is mentioned.

RESEARCH METHODOLOGY

This research study is based on the primary as well as secondary source of data collection which is comprised of sources, available in law as precedents, treaties and conventions, websites, journals, legislative materials, government reports, acts and provisions.

CASE STUDIES:

This research paper also tries to explore some crucial landmark Rape Cases judgments that initialized the urgent and necessary changes and amendments in the existing laws while dealing with cases, pertaining to Rape and punishments thereto. Few are mentioned as follows:

CASE: In re. NIRBHAYA CASE, (2013)

WITH CRIMINAL APPEAL NOS. 609-610 OF 2017, arising out of S.L.P. (Criminal) Nos.5027-5028 of 2014)

Facts and Judgments of the Case:

This gang-rape and murder case of Delhi shook the entire legal fraternity, masses and also, it became the sensational news in the entire nation. Due to this unfortunate event, the only blessings in disguise occurred and that was, amendment in Rape Laws provisions! It also led an urge to change the definition of Juvenile under the Juvenile Justice (Care and Protection of Children) Bill, 2014, which the trial of children between the age-group 16-18 years, to be considered as adults for the commission of such heinous crimes.

CASE: MATHURA RAPE CASE

(Tuka Ram Vs. State of Maharashtra),

CITATION: 1979 AIR1851979 SCR (1)8101979 SCC (2)143

Facts and Judgments of the Case:

The very brutal and inhumane case of Mathura is also termed as, 'Mathura Rape Case' which resulted into outrage among every Indian. A young, 16 years old, poor girl had been raped by two police officers within the police compound of Gadchiroli region of Maharashtra which resulted into an urgent need of reforming the custodial deaths in India.⁵

CASE: VISHAKHA GUIDELINES- BHANWARI DEVI CASE

(Case of Vishakha Vs. State Of Rajasthan & Others), 1997

Facts and Judgments of the Case:

The year, 1997, Rajasthan witnessed the huge and massive set-back in terms of the occurrences of inhumane incidence, happened against a social-worker, 'Bhanwari Devi'. This gang-rape of a poor woman, resulted into guidelines, related to Sexual harassment at workplace. In consonance to the safety measures to be taken for the protection of working women, the Apex Court in India, immediately issues certain guidelines for the women who were to be protected while discharging any official duties at workplace. These guidelines, laid the founding principles, popularly known as, 'Vishakha Guidelines Principles to protect women against sexual harassment at workplace, 2013'.⁶

Legal Reforms: The Criminal Law (2nd Amendment) Act of 1983:

There are some radical changes which occurred in the Criminal Laws in Indian rape –related cases after the heinous and barbaric gang-rape incidence of 'Nirbhaya Rape Case,' in Delhi. But, this unfortunate incidence, turned out to be a whistle-blower in many aspects which were necessary to bring out in rape-related cases. These are as under:

➤ This Act, pertaining to Criminal Law in the year, 1983, paved a ray of hope for the victim and her family by its statutory provision under the Evidence Act in the year, 1983. Section 114

⁵ <https://www.legalserviceindia.com/legal/article-374-case-analysis-vishaka-and-others-v-s-state-of-rajasthan.html> ⁶ Article14, Constitution Of India, ('Right To Equality')

(A) of the Act, supported a victim with regards to her consent issues. It has cleared out any issues which puts, the rape victim in suspicion if she used to deny that she had been consented for the sexual intimacy. Hence, due to the Amendment Act, the benefit of doubt has been given to the victim and not to the culprit of the alleged offence.

➤ After Nirbhaya Rape Case, there were the insertion of new punishment provisions in the existing Section 376(A), 376(B), 376(C), 376(D) of IPC and as a result, the scope of the definitions, given for custodial rape provisions become more severe.

➤ Besides the above-mentioned provisions, the amendment provisions also have made the laws, for stringent for the accused and also, the burden of proving the commission or non commission of rape has been shifted to the Accused in a more formal manner.

DISCUSSION

Impediment to Justice:

Based upon the above instances and observations, Apex Court has mentioned some of the following guidelines which are as under:

- Sexual Harassment and sexual assault cases should be take on high priority basis and should be given immediate legal representation and support.
- Victim of such sexual offences should be given the assistance of various other agencies as well as, psychiatric consultation or medical assistance, as and when required. ➤ The victim should be provided, all the legal help and support from law agencies which shall turned out to be a good moral and socio-legal support to the victim and her family. ➤ The victim should also be given support from the department of police with regard to the victim's right to get medical treatment and lab assistance. The victim's and her family's identity should be kept secret and in-camera proceedings must be implemented.
- It is the duty of the police to intimate victim about her legal right to get counseling and protection against derogative interrogations.
- Every police station should have the list of advocates for such cases, relating to rape and sexual assault.
- Advocates shall be nominated by the Court on to the request of police as soon as possible so, that the victim shall be protected against any negative interrogations, done by the police and to harass the victim unnecessarily. It is pertinent to note that the privacy of victim's and her family ought to be maintained under all the circumstances.
- It is important to have Criminal Injuries Compensation Board which is enshrined under Article 38 (1) of the Directive Principles of the Constitution of India.⁷

FINDING & CONCLUSION

The National Crime Records Bureau of India has mentioned in their reports that almost, 88 rape cases have been reported per day in India. This heart-wrenching fact has revealed a harsh fact that the crimes against women have been increased drastically from the last few years. The Society on the other hand, should be more sensitized towards understanding the mental and emotional agony of such rape victim and her family in a more serene manner and with compassionate heart. India has the commitment to ensure Gender Parity in India by giving special attention on women's economic empowerment. India has taken bold steps towards creating new opportunities of job creation, entrepreneurship, skill building and access to new industries particularly ICT, through its national initiatives like, "Beti Bachao, Beti Padhao", "Skill India", "Make in India" and "Digital India".⁸

At present, the rape offence has shattered the belief system of women in India, knowing the harsh fact that women do not possess, equal respect and honor in society. The compensatory jurisprudence also had been considered as one of the major remedial measure after the case of verdict of Gautam wherein, the S.C. made a provision that the rape victim and her family shall get the pecuniary remedy along with the physical punishment against such heinous criminals.

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