



RAPE CRISIS IN INDIA

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ABSTRACT

According to the global report, India stands fifth on the rape crime at the global level and rape is the fourth largest crime in the country. India's fight with rape is not with the offender but the society in which we reside. The perpetrators escape the punishment because of power, political backing, and strong connection with authorities who even assist them in escape from the legality. If one examines the crisis of rape in the country, one can trace the problem stems from the ancient rape culture being followed and the present system of law which delays and denies justice to the victims. The issue is now prevalent among the youth also and hence requires much care and attention.

INTRODUCTION

An overview of freedom comes from equality and so the world must adhere. A woman is less a daughter, a mother, a housewife playing her role effectively in all field of life compromising her needs to suffice all needs, often questioned of her freedom, rights being subjugated with the part of society who confines her to abide with the norms of patriarchy.

A man excels in his life, a woman behind him is credited. She seems to be most important component for reforming a society. In many countries she has demarcated the status of a god. In India, a woman is demarcated to be God Lakshmi, Sarasvati, religiously she is worshipped. A woman plays an important part in our lives who binds all people firmly with her love and care, but what society today offers to her in return is disappointing. If you look at the depth of it, you will be shocked to see that how women are treated in different parts of the country. From ancient period woman is taught to do the household

chores and be confined to the household area and on the other hand a man is expected to work and earn for living. The custom follows and continues to strive till date.

The same stigma evolves and continues to exist in form of a new pattern where a woman despite being educated is expected to stay in the house and take care of the family. A woman daily faces discrimination whether, at home or her workplace, she is judged and often questioned for her freedom by the unjust society in which we live. A woman is expected to be an ideal person, expected to be polite, to have values, to be an obedient housewife, she is expected to be the character of an overall submissive woman to go with the narrative about what society deems fits. From educational to medical institutions to business areas to household areas she is being suppressed. Her voice remains to suppress throughout her life and dare she raises her voice the society holds a strong condemnation often demarcating her characterless. This suppression becomes more dangerous when today it has taken the shape of the evil picture. The picture which alarms all to hold their breath and watch with pain in eyes, the picture where the painter is the devil who spills all his vulnerabilities of being man who shed the

canvas with blood and tear. Difficult for us to even take the name of the act (rape) because as individuals of the society it's shame for us to talk about the word "Rape". A word 'Rape' which we all are ashamed to talk about even after 73 years of India's independence when the nation is progressing and developing each day with the pace of the world.

How one can forget one of the horrific cases which happened on the dark and dreadful night of 16 December 2012 which shook the entire country and where even justice served today after seven years of struggle can't compensate back the victim's life nor the psychological, emotional harm caused to the victim's family and the entire nation, the Nirbhaya gang-rape case.

On the intervening night of 16 Dec 2012, the victim and her friend were returning to home, hopped into a private bus when the duo was harassed by six men, the girl was gang-raped by those six including the driver. The victim sustained internal injuries and later died.

Rape is identified under the Sec 376 Indian Penal Code. Furthermore, the rape cases have been categorized as Incest Rape (rape done by the blood relative) and other rape cases (rape done by other than the blood relative). According to the National Crimes,

Record Bureau rape happens every 16 minutes in India with incest rape being the most common. Rape is one of the most reprehensible violent crime committed against a woman. It causes not only physical torture to the body but also causes mental, psychological, and emotional harm. The agony caused complemented with victim -blaming along with which she tends to suffer from a sense of shame at no-fault hers on her part and carries the burden of being a woman throughout her life.

According to the NCRB data, Crime in India' 2020 report shows how common crimes against women witnessed a steep rise across the country. A total of 4,05,861 cases of crime against women were registered during 2019, showing an increase of 7.3% over 2018. The number continues to rise even after the passing of the criminal amendment act 2013 which was formed after what happened on the dark fateful night of December 16, 2012, the Nirbhaya gang-rape case. The case shook the entire nation, sparked off widespread protests and led many women to break their silence over sexual violence that goes widely unreported in the country. The list continues to add with more horrific cases such as the Unnao gang rape case 2017, Kathua rape case in April 2018 where an eight-year-old girl was raped multiple

times by different man and later died, followed by the Hyderabad gang rape case where a veterinary doctor was found dead with her body and partially burnt to death.

1.1 Research Questions

- What is meaning of rape?
- What are the loopholes in the rape cases?
- How can rape be reduced in India?
- Will Rape culture end?

1.2 Objectives

Rape is one of the most heinous crimes which a person can commit against an individual. The objective of the paper is to determine and highlight the root causes and discover the loopholes within the whole system. The paper focuses on the grim reality of the situation and calls upon all the individuals of the society to come forward and provide full support to the whole system by ending orthodox beliefs, creating social awareness among the public, proper law enforcement, stringent punishments and pledge the country to be free from rape.

1.3 Methodology

To understand the reality of the situation and crisis of rape in India the study could be beneficial and more qualitative if survey and

interview could be conducted but due to pandemic in the country my research paper was restricted to secondary data. The report is from secondary data and this mode of collecting data was easier and provided best access to reliable data. It also saved time and provided data to complete paper before deadline.

1.4 Scope

A woman suffers in all areas of her life, sometimes she speaks, sometimes she refrains to speak her mind and sometimes her mouth is kept shut. A country of billion people with religious and methodological beliefs is a country full of surprises and disasters, on one side the countrymen worship lord Sarasvati and on the other hand disrespects women who are demarcated to the status of God.

The paper attempts to plot the background of women in the Indian society and portray the man's masculinity over women by committing a heinous crime which completely shatters the victim's life, the paper then examines the loopholes within the law which lacks behind to improve the situation of rape crimes in India. The paper also highlights the root cause of the issue i.e., 'Rape Culture' and how ending it can bring some respite to the situation in the country.

1.5 Limitation

On researching and analysing the study of the law and resources, the researchers had relied upon, it has been found that the law under rape cases has evolved starting from the British period till today. The law in India is different from other countries, as the situation changes so the law must, but on research, it is found that our law is not changing at the same pace to address the issues. The researchers and activist are trying to work on the development of the law with the contemporary issues arising in connection therewith

II. COMPREHENSION OF THE RAPE LAW (SECTION 375 IPC)

Rape means when an offender with an intention penetrates another's vagina, urethra, anus, or mouth with a penis, without the opposite person's consent. Rape in concrete terms means a criminal offense typically committed by the offender of forcing another person to own sexual issues with have the offender against their will. In common language, it means intercourse with a girl without her consent by force, fear, misrepresentation, or fraud. The Legal Code (sec 375) covers forced sexual issues with forcefully penetrating the

penis to any extent into the vagina, urethra, or the anus of a woman, or by inserting any object or any a (part of the) body not being penis or by manipulating any part of the body of a girl to cause penetration, or by applying mouth to vagina, urethra, or anu of person¹. The act resolves the confusion from the previous law and mentions harsh punishment in cases of remarkable cases of sexual violence, the legislation was also widened to define acts like penetration of the penis into the vagina, urethra, anus or mouth, or any object or any a part of the body to any extent into the lady body parts, as constituting an offence of sexual abuse.

The new punishment prescribes imprisonment of not but 10 years, but which may extend to imprisonment for life and with fine -cognizable -non-bailable -triable by Court of Session. The law now awards capital punishment in gang rape cases and in cases where death is caused to a victim or leading to a persistent vegetative state of the victim. The hanging of the four men convicted within the Nirbhaya Gang rape case witnessed the new stringent punishment of the rape law.

III. DISCOVERING THE LOOPHOLES WITHIN THE SYSTEM

India has now stringent laws for punishing the perpetrators in rape cases but still, it lacks to cover laws for some areas where the legality even fails to punish the offender committing the same act as the offender is punished under the rape law, non-criminalised act like marital rape. Indian legal code specifies a law for dealing with rape cases but when we examine deeply, we come to know the reality of the situation that how offender's escape the punishment and how the norms, patriarchal root thinking of society, power and position sets the offender free leaving behind the victim to suffer for the rest of their life.

In India judgment is pronounced even before the case reaches the law of land, people with their interest and calculations decide what is right for them, ignoring the fact and circumstances of the case. They act like the second judge who has no real role to play except having the power to influence the mind of the victim, accused and people connected with such case. The testimony in-country is influenced mostly by power and position, one who has position and power is assumed to be free from legality, the less in

¹ Section 375 in The Indian Penal Code
(indiankanoon.org)

position and power or one who can't afford cost bows down even before putting a fight for his or her rights. The whole scenario above is in the picture to mirror the reality of how criminal equity framework works in the country. Countrymen have less faith in the judicial system of the country because of the time period taken by system to serve justice to one fairly.

Thus, assumption based in the mind of all then hinders the system itself like the victim not reporting the case, outside court settlement, judgement oriented based society, corrupt politicians, bureaucrats, community leaders, the victim's detracting from their complaints, prolonged years of battle for justice and many other reasons can be attributed to the fail system of the judiciary today, below are some loopholes when removed can improve the situation:

i. Low conviction rate

The conviction of the criminal is the ultimate test of justice and this justice denied is detrimental for a society.

Conviction rate refers to the number, usually presented as a percentage that indicates how frequently arrests in each community lead to actual criminal charges.

According to the latest report by National Crimes Record Bureau 2020, the conviction rate in rape cases is low at 27.2 % at the national level lower than 2019 with 30 %. This shows a delay in completion of a trail of rape cases, the conviction rate of rape cases is even lower than the rate of murder cases². The main reasons attributed can be lower fast track courts, misuse of power, victim's reluctance to report, a testimony of victim's elders, community leaders or sometimes the victim themselves retracts from the case.

In India, most of the times criminals escape punishment because victim's turn hostile. The victims generally do not have much stand on their decisions. It is the elders in the family, relatives or community leaders who decide on testimony. Sometimes the case is settled outside the court in lieu of money. The feelings, will and justice of victims are sold to such criminals, setting them free and justifying their heinous act for some money. The witnesses also change their statement either for money or are threatened by criminals to change their statement in court. The classic example of how money and power of offender delay justice and tries to find loopholes to escape

² India sees 88 rape cases a day; conviction rate below 30% | India News - Times of India (indiatimes.com)

the punishment was seen in the case of **Priyadarshini Matto case**.³

In this case Priyadarshini (victim) a 23-year-old student pursuing law was raped and murdered by Santosh Kumar Singh (perpetrator) son of JP Singh who was then inspector general police of Pondicherry. The case took several turns because of the influential power of the offender, the victim was found raped and murdered at her residence in New Delhi. In 1999 the accused was not charged of the offence by trial court because of presenting evidence in a poorly condition, on investigating the case it was found that the party had strong legal relations where the police of Delhi also helped in creating fake evidence, misplaced the witness who were the servant and a sub police to protect the offender. It was in 2006 where the case was once again investigated because of pressure and demand from public and media, two judges were given the case and the case traced several loopholes used by the offender and passed the judgement in 42 days proving the offender punishable for murder and rape. Thus, it shows how money and power not only delays justice but how the system officials even assist the perpetrators. The case which are rare and our serious in public

still gets justice but the cases which are not in the limelight continue to be dragged for several years and in most cases, justice is left unserved to the victims. The conviction rate remains slow especially in cases of sexual violence, domestic violence, rape, and sexual assault.

ii. Rape law, not Gender Neutral.

In India, there has been an increasing number of crimes against women .New Delhi capital of the country has been the most unsafe cities in the world. The victim in rape has always been the woman where a man is the perpetrators of such act, according to IPC section 375 and 366 the definition and punishments of rape are gendered specific the definition states “*A man is said to commit ‘rape’ if he....*” The Indian law fails to accept the concept of gender neutrality, male rape is far too prevalent to be considered as a heinous crime amounting to the same provisions and meaning specified under section 375 of IPC.

Some of the thought of not accepting the concept of gender neutrality stems from patriarchal society which thinks that men are physically stronger than women and

³ Priyadarshini Mattoo - Wikipedia

might defend themselves, also rape is seen as the act of control and power of men over women. The second reason is due to the deplorable position of ladies within the country which brings opposition from people within the society. Rape law should be gender neutral as rape is simply not the act of men committing force over women, but the definition should widen to constitute the victim and a perpetrator on a neutral basis as this law denies the right of men. To be more specific this law recognises rape as the portray of men's power and strength to commit the crime on the women and not as the violation of basic human rights which should be provided equally to the men, transgender as that a woman is granted. Though the rights are secured under section 377 of IPC under 'unnatural offences' and POSCO act but the law fails to account for it as a heinous act that of a rape.

iii. Marital Rape – Not against the law

According to the Indian Legal Code in section 375 "sexual activity by a man with his wife, the wife not being under 15 years of age, does not account as 'rape' as per present law the wife is assumed to give consent to have sex with her husband after

marrying him⁴. It is viewed in Hinduism that marriage is sacred, and the wife is assumed to be under the control of her husband. The root cause behind not charging marital rape as an offence stems from the nature of marriage and the position of ladies in Indian society.

Even though the Indian constitution mentions equality in Article 14, it fails to view the right of a woman to have control over marital intercourse as a part of equality. There has been increasing demand for the criminalisation of marital rape, but viewpoint came that first if it's criminalised then, it would lead to misbalance of society, as marriage is scared in Indian theory, second the issue was pointed that then several fraud cases would be filed against husband and therefore India fails to criminalise marital rape as an offence.

Though non-criminalising violates article 21 and 14 indirectly no legal provision has been made to date. Indian law should recognise the right to equality of a woman more than the orthodox beliefs and institution of marriage. This shows that human dignity can be easily denied once

⁴ Plea To Make Rape Law [Section 375IPC] Gender Neutral: SC Refuses To Interfere (livelaw.in)

she is married and gives a right of a woman to be exploited in the name of marriage.

IV. A LOOK AT THE RAPE CULTURE

India is an ancient country with diverse culture, the society stands on religious beliefs and mythological beliefs. India's main problem stems from the ancient level thinking such as patriarchy, male domination. Society relies upon orthodox beliefs in a negative narrative who do not want to provide equality and brotherhood in practice. An increasing number of crimes against women show that how the culture of accepting women being disregarded is treated normal and thus easily denied justice. As a girl grows, she is restricted to her activities and is controlled for her actions by the elders in the family and while on the other hand boys are given the freedom to explore and roam free without restrictions. An overview of society shows that how rampant the culture prevails, one culture which stems from this patriarchal structure is the rape culture.

What is exactly rape culture? Who made it and why? These are not only questions but rather a problem that needs to be addressed. Rape culture is a culture or say an environment where people believe that it is the women who are responsible for acts

such as rape, sexual assault, honour killing etc. The culture normalizes with the victim being raped, being slut-shamed, sexually objectified, and never account rapist at fault. The people following this culture encourage violence against women, the culture classifies women in two parts one the 'decent' one and the other 'bad or misbehaved'. The classification views that only misbehaved women are raped or assaulted, and it was them who invited the offender to commit such crime and thus are deemed to be deserving of such a heinous act.

When India says it needs to improve literacy level one thing it will need more is to improve the mindset of people. Rape culture creates fear in the mind of the victim to confess her or his problem to the authorities and thus leave the perpetrators set free. Most of the times authorities refuse to file complaints as they do not want to go against the patriarchal system, the testimony is not in the hand of the victim to decide but lies with the elders in the family who try to suppress the fight against the offender only for maintaining a reputation of the family.

The culture is now streaming among the youth too, the country witnessed another

instance of portrayal of man's masculinity over girl among a group of literate young boys and girls of 16 -18 years and subsequently shocked the entire nation. On 3rd May 2020, a chat group named 'Boy's locker room' chat screen shorts in the social media app 'Instagram' created social unrest among the viewers and the matter was looked at by Delhi Police⁵. The issue was concerning young boys and girls sharing nude photographs of girls and sexually objectifying her, the teenage group commented on the shape size and physique of the girl's nudes, the whole issue became more alarming when the boys even planned on gang rapping and even planned to assault them sexually. This whole issue shows that how rape culture is persistent in a society where even young boys and girls are influenced by it. This was one locker room but, there are more locker rooms where women are sexually objectified, many viewers on social media showed concern about the issue and some social media handles questioned that why at the first-place girls wore short clothes and posted in their accounts, why the girls shared nudes, this eventually shows that how the culture turns the table towards victim instead of

questioning that why boys breached the trust of girls at the first place.

The rape culture eventually normalizes with such acts and turn to blame victims, this culture affects the thinking power of the victim. The victims always feel rejection and shame in society and resort to keep silence. It is the people who decide the meaning of rape and according to them if a victim does not fight against the offender, then it meant she wanted such act. There is a lack of understanding among the women to handle such situation emotionally and psychologically, the effects are on the men also.

Men are presumed to be physically and psychologically strong and thus when they complain, the authorities never show sympathy, the men are only considered as perpetrators in the case of rape. Men suffer psychological and humiliation as their machoism is questioned.

The culture develops from the two viewpoints, first the role of women in the home and the second in the modernized and industrialiser area where she is visible in workplaces which lead men to do such acts

⁵ 'Boys Locker Room' case: 15-year-old held in South Delhi, 10 others identified- The New Indian Express

to suppress her or take revenge. The culture further prevails from the normalization of jokes on rape, sexism, abused languages, toxic songs, and sexual scenes in the movies, victim-blaming and questioning of a victim rather than offenders.

The culture holds that women have to protect and safeguard their safety. In the Nirbhaya gang-rape case an accused among the five Mukesh Singh men charged with rape and murder in an interview with BBC reporter said that a woman should not roam around nine o'clock at night and that a girl is responsible for the act, had she (the victim) kept quiet and obediently allowed them to rape the gang would have dropped the girl out of the bus and only hit the boy (victim's friend)⁶. This statement made by him shows that how well the mentality thrives in most people. When and how the culture will end is a lifelong battle as laws can be made for handling crimes but not on how people will think, it's the need of the hour where we as Indian's try to end the rape culture.

IV. CONCLUSION

Rape not only tears the victim's body but also tears him or her from inside, the trauma

a victim continues to have for the rest of their life cannot be compensated at the cost of justice served to them. India's problem with rape is not a one-day issue but it is a life-long battle which the country should fight. The problem lies based on the early system of thinking and orthodox beliefs. As it is always said prevention is better than cure so it would be sensible in the first place that preventive measures are taken by the government, regulating bodies to overcome the crime.

One of the main issues behind the rape happening all over the country is weak security arrangements for women. The country fails to ensure safety and security for women, there are not adequate police employed to tackle the issue, most of the time the police officials reach late at the place where incident where such crimes take place. Not only this sometimes the public is too ignorant to report and call the police because of the fear of being killed by the criminals. The execution of rape cases takes up time and sometimes there is laziness from the police in executing the investigation.

⁶ Nirbhaya case: Four Indian men executed for 2012 Delhi bus rape and murder - BBC News

The control should be in the hands of the centre to execute such heinous crime as the state always delays and execution from the centre will portray the severity of the matter which will create fear in the mind of the rapist. India's problem with rape cannot be handled with preventive measures but by breaking the social norms which are followed from the ancient period. There is the need of eradicating the patriarchal system which always thinks men to be superior to women this thinking builds in the mind of boys and they think they have the right to objectify, tease or comment and rape her.



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