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Rape: Legal changes towards justice for rape

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ABSTRACT

The word “rape” has come from Latin word “rapio” which means to “seize.” The crime of Rape is a major problem in India and this paper tries to highlight the same issue by giving an overview of sexual violence cases and the amendments brought to it. Criminal Procedure code, Indian penal code and Indian Evidence Act are the milestones discussed in this paper to give light on such sensitive topic of Rape in India. The stigma which exist in our society from a very long period of time is RAPE. The dictionary meaning of the word rape is “the ravishing or violation of a woman.” The woman who is the victim of the rape, undergoes a traumatic situation and it is really very difficult for woman to come out this painful trauma. In India Rape is considered as a cognizable offence. There are many various provisions under IPC (Indian Penal Code) rape is defined under section 375 [1] of IPC, 1860. The definition of the crime is defined under this article and also it prescribe punishment of rape. When a man penetrates or does sexual activity or sexual intercourse with a woman without her consent, it will amount to rape. Here penetration means that even slightest touch of penis to vagina amounts to rape, it cannot be said that rape is not committed if hymen is ruptured. Under IPC it has been clearly mention that no person can disclose the name of the rape victim and if anybody does so, he will be punished with either description for a term which may extend to two years and shall also be liable for fine. Those person who commit such crimes are considered as psychologically sadistic persons who commit such shameful crime of Rape. It is regarded as a threatening act towards a woman, it create fear and humiliation in mind of the victim. It is not an assault only against a woman but against her family and community as well. Sexual violence and domestic violence is not only a national problem but a global problem. Though many efforts need to be done to provide justice to all the victims of Rape. Legislative acts and judicial judgments can bring major changes in the society. Investigative officer and health care departments plays a vital role in such sensitive matters especially during criminal trials going against the prosecutor. Every state should try to bring positive changes towards providing justice to sexual assault victims.

Keywords: Criminal Procedure Code, Indian Penal Code, Indian Evidence Act, Section 375[1], Section 376(2), Section 114(A), State of Karnataka v. Manjana, Section 157 CrPC, Section 173 CrPC, Section 376, 376A, 376B, 376C, or 376D IPC, Section 53 (2) CrPC,

1. INTRODUCTION

One of India's major problem is rape; in 2008, more than 20,000 rape cases were reported, and the estimation is that around 69 cases are only got reported. Still, a significant change and concerted efforts & contributions have led an essential step in forwarding justice to rape victims earlier they (victims) were suppressed and threatened by raising their voice against such kind of crime. The efforts were made by legislatures, courts, Law commission of India, non-governmental organizations, and women's activists played a vital role in bringing up these cases and delivering justice to the victims. The paper tries to discuss the achievements made by amendments in criminal law: The Indian Evidence Act, Indian Penal Code, and The Criminal Procedure Code and Supreme Court judgments.

2. THE CRIMINAL LAW (AMENDMENT) ACT OF 1983

Some significant amendments were brought in Criminal Procedure Code in 1983 after infamous Mathura Case, which was particularly regarding what constituted custodial rape, provisions were made for enhanced punishments for offenses which comes under section 376(2). Section 376 (2) of IPC, which is booked on the presumption, where there is an absence of consent, brought an amendment in the Indian Evidence Act under section 114(A). Under the situation of custodian rape, gang rape or rape with a pregnant woman, and if it is proved that sexual intercourse is done by the accused with the woman who is alleged to have been raped, if states in the court that she did not consent to it, then the court shall presume that women have not consented to it and it will

amount to rape. The amendment was made with the view to overcoming such gender inequality, which exists at workplaces, police stations, and such other places where women and men work together at the same level. Such amendments are introduced for women's safety so that women don't become a victim of a forceful sexual act committed against her. The legislation is trying to plug the loopholes by awarding enhanced punishments in custodial rape cases and presuming the absence of consent under section 114(A) of the Indian Evidence Act. Another critical dimension that talks about examining doctors under custodial rape cases should understand that the victim's ability to resist against her accuser depends on gender-based power. There might be a situation where a woman has few or no injuries because women are overpowered or made subject to sexual intercourse without her permission and can be seen as evidence of resistance.

3. THE SUPREME COURT JUDGEMENT IN 2000

Before the landmark judgments delivered in the year 2000 by Supreme Court in the case *State of Karnataka v. Manjuna*, the earlier medico-legal examination of the rape victim was taken only after a request from the police, it means that victim needs to show courage and register an FIR against the accused person in a police station of correct jurisdictions. There could be a lot of social pressure and inordinate delays in filing a complaint as we know that victims are only blamed for the rape in our society, the victim has to undergo physical and mental trauma before registration of any complaint. Only after this delayed procedure, doctors are ready for the medical examination, but after this long period, there are higher probabilities and possibilities that medical proves can be lost or cannot be collected on time. When a victim directly to the government hospital for the examination, then they refused or denied this crucial medico-legal examination because of the mere fact that police have not issued any requisition to it. Such delays result in the accused's free acquittal because of the lack of shreds of evidence or on the benefit of reasonable doubt, and victims are denied justice even after facing such a traumatized situation. Supreme Court recognized that there is a need for a medico-legal examination for the rape victim. This was stated by the Supreme Court in its 2000 judgment. Secondly, it was very clearly stated and recognized that it was the rape victim's right to approach medical help even before registering herself for any legal aid or lodging a complaint against the accused. The hospital was obliged to examine and help the rape victim with necessary medical assistance and initiate a police complaint if requested by the victim. After this landmark judgment, it was made mandatory for doctors and hospitals to examine a rape victim even without a police requisition.

4. THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) ACT OF 2008.

Many rape victims are not ready to file a complaint against the accused due to cumbersome procedures, which involve unsupportive and unpleasant atmosphere at police stations. Moreover, the victim has to narrate their ordeal to male police officers. There are inordinate delays in the trial case. Women muster up the courage to initiate criminal proceedings. They are psychologically harassed in open courts, undergo long trials, and have to repeat their traumatic experience again and again in front of people who view her testimony with suspicion.

In many cases, it has been found that due to lack of evidence and on reasonable grounds. Most of the time, victims are not given any kind of relief; instead, accused are acquitted on the ground of lack of evidence. These issues were taken care of in the CrPC, which was amended in the year 2008. The amendments made for the same came into effect in the year 2009. A provision has been added to section 157 CrPC dealing with the investigation concerning the offense of rape. It has been said that the statement of the victim will be recorded at the residence of the victim or in place of her own choice and also by a women police officer in the presence of her parents and guardian or any close relative or social worker of the locality.

Section 173 CrPC has been amended and mandates that investigation concerning the rape of a child must be completed within three months from the date when the information was recorded by the officer in charge of the police station. Also, reports forwarded to the magistrate should contain medical statements of the rape victim. Though amendments made in the CrPC in 1983 mandates camera inquiry and trial for rape offense mentioned under section 376, 376A, 376B, 376C, or 376D IPC, it was still found that after undergoing such traumatic situation it was really very difficult for rape victims. It also lifts a partial ban on publishing or printing real names and address of the named victim, proceedings concerning offense of rape are subject to confidentiality.

The amendments made in the year 2008 has brought new section 357(A) CrPC, which talks about victim compensation schemes where the state government with the consultation of the central government has prepared victim compensation scheme and also to provide relief in those cases where the offender or accused person cannot be traced or identified. This monetary support towards the rape victim is for immediate and long-term rehabilitation of the already shattered rape cases victim.

The Code of Criminal Procedure (Amendment) Act of 2005

The liberal interpretation of section 53 (2) CrPC by high courts like Punjab & Haryana and Andhra Pradesh it has become mandatory for the rape victim that they should be examined by a woman doctor only. The women doctors were available to make the rape victim comfortable. The women doctors are not available sometimes because of their busy schedule. They are busy because of their workload with their maternity services and even if they become available by chance the proper reports are not been given because cursory examination is performed and the collection of evidence is inadequate or improper. The Criminal Procedure Code (Amendment) Act of 2005 introduced specific sections for medical examination of victims of rape (section 164(A) CrPC), medical examination of those accused of rape (section 53 (A) CrPC) and investigation by judicial magistrates of custodial rape and deaths (section 176(1A)(a)(b) CrPC).

In section 164(A) CrPC the legal specification for medical examination of a victim of rape is given. The main elements of this examination is that there should be the consent of the victim and he or she should be part of the report. If there is consent of the victim then only the examination will be conducted by any registered medical practitioner (only allopathic doctors registered under the Medical Council of India (MCI)) who are employed in the hospital. This hospital should come under the government or a local authority. It also given that if the female doctor is not available then the male doctor can carry out the examination if there is a

consent of the victim. The examination done by the female doctor is ideal but the law does not make this compulsory, keeping in mind that the medical examination must not be delayed or postponed. In section 164(A) CrPC it is also mentioned that the medical examination must be done within 24 hours of the police receiving information. The medical examination must be carried out within 24 hours and the "reasoned" reports must be prepared. The report should consist of recording the consent of the victim, her or his name and address, the person by whom she was brought by, her age, a description of the materials collected from the victim for DNA profiling, marks of injury if any, her general mental condition other material particulars in reasonable detail, and the exact time of commencement and completion of the examination. The law mandates that the report should state precisely the reasons for each conclusion made. Also, it should be forwarded without delay to the investigating officer who, in turn, shall forward it to the magistrate concerned.

Section 164A (7) CrPC explicitly states that nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or any person competent to give such consent on her behalf. It is clear that the medical examination cannot take place without the consent of the victim and even the court cannot force the victim to go under medical examination. If we read the section carefully we find that there should be consent of the victim even for the partial examination. That means that the victim may also decide whether he or she wants to go under physical examination or genital examination and allow to collect the bodily evidence.

The section 39 CrPC does not particularize section 375 IPC or 376 IPC. Doctors and hospitals tell that they choose to inform the police at that time only so that they do not get involved in the legal problems. The doctors says that the victims are open to tell or explain to the police about the initiation of the criminal proceedings. In the reality the police have often registered the cases and have started the criminal investigation on the hospital's medico legal case intimation alone without the consent of the victim. In such cases, the victim of rape had gone under a superfluous trial for which the victim has not consented at all. The law must be clear on this issue, because a confusion is created where the victims have agreed to do the medical examination and do not want the initiation of the criminal proceedings for some time because the victims wants to make up their mind to face this situation.

Amendments were also made in section 176 CrPC regarding an inquiry by a magistrate for the cause of death. Section (1A) was added to it by which if "(a) any person dies or disappears, or (b) rape is alleged to have been committed on any woman, while such person or woman is in the custody of police or in any other custody authorized by the Magistrate or the Court under this Code, in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed." This amendment now makes a compulsion that a judicial a magistrate must investigate all cases of custodial rape and deaths in custody.

The problem of rape in India: Analysis

Rape takes place every 20 minutes in India. Statistics show that the number of rapes has risen steadily. But only 10% of all rapes get reported, and just 24% of these cases see convictions. Why is this? Survivors of rape tell us that fighting a rape case can feel like being subjected to assault over again. The authorities routinely disbelieve and humiliate them; they are represented insensitively in the media, and their recovery is not prioritized. Besides, a large part of society continues to blame the survivor, not the rapist. All this discourages many survivors of rape from reporting the incident. As a result, rapists escape the law, and many repeat their crimes. The balance of power gets tipped in their favour. But we, the members of society, far outnumber the rapist. What stops us from supporting the survivor's fight for justice? For a survivor of rape and her family, the journey towards justice is exhausting and daunting. Some reasons why girls are raped –

1. Sexual satisfaction
2. Drugs and alcohol
3. Childhood environment
4. Culture
5. War and many more reasons.

Here, we present the various steps directly involved in this process –

Filing an FIR

A survivor, her family or anyone aware of the crime can file a First Information Report (FIR) with the police as the first and official account of the crime. A police investigation can begin only after the FIR is filed. A copy must be given to the survivor and her family for free. If an FIR is registered at a police station outside the criminal jurisdiction, it is called a zero number FIR. The police station must transfer a zero number FIR to the police station in charge of the investigation.

Recording a witness' statement

At the beginning of the investigation process, the police obtain written comments from the witnesses (if any). These witnesses can then act as additional voices against the assailant and support the survivor's case in court.

Investigation of crime scene

Any evidence that can place the survivor, witnesses, and perpetrators at the time and place of the crime is crucial. The crime scene is surveyed for any forensic or material evidence supporting the survivor's account.

Medical examination of the survivor

The medical investigation is a part of the official police investigation. It comprises the treatment of the survivor as well as the documentation of any signs indicating rape. The absence of any symptoms doesn't mean that rape hasn't occurred.

Rehabilitation of survivor

Doctors at a hospital, public or private, can initiate the process of the survivor's mental healing by speaking with her and assuring her that she is not alone in the fight for justice. Subsequently, a counsellor should be in touch with her, who can help in the long run.

Signing the panchnama

All the survivor's material possessions and accused (clothes and jewellery worn at the time of the assault, etc.) should be sealed and submitted to the investigating officer. A confirmation that the evidence has been collected, called a panchnama, should be signed by at least two people whom the survivor trusts.

The arrest of the accused

The police can directly arrest the accused if his whereabouts and identity are known to the survivor. If they are unknown, the police can use sketches drawn with the survivor's help or witnesses to track down and arrest the accused. In some cases, the police arrest some suspects out of which the accused is identified through an official identification parade.

Medical examination of the accused

The accused is sent for a thorough medical check-up to check for any signs that might validate the incident's survivor's account. Even if these signs are absent, it does not prove that rape hasn't occurred.

Recording the statement of the survivor and any witnesses before a magistrate

The survivor and any witnesses give a detailed description of the crime in their own words. This is the official statement that allows for the charge sheet to be filed, and it is used as evidence in court.

Filing of the charge sheet

The police submit a detailed account of the criminal investigation to the Sessions Court, which includes the survivor, witnesses, and accused's statements. The FIR and the findings of the investigation are also a part of the charge sheet. Once the charge sheet is submitted to the court, the trial can begin.

Trial

A rape case is fought by the state in which the survivor lives in and not the survivor herself. The public prosecutor, who fights on behalf of the survivor and the lawyers of the accused, put forth their arguments, and the survivor, witnesses and accused give their testimony. All rape trials are to be held in-camera and are therefore not open to the general public and media.

Delivery of the judgment

If found guilty, the accused can be jailed for a minimum period of 7 years, but which may extend to life imprisonment and elegant, depending on the exact nature of the assault. If the incident is termed as 'rarest of the rare', the accused can be sentenced to death.

5. CONCLUSION

The researcher refers to rape problems. Though many more efforts are needed to provide justice to all rape victims, various changes and amendments brought by the legislation have brought some hope for justice. The active participation and contribution of legislative and judicial actions that significant investigation and health care changes have been undertaken. Still, violence poses a threat and obstacle to women's lives. Many women lose their health, livelihood, husband, families, and support network due to rape. This cycle needs to stop; rape is a zero-tolerance act committed by psychopaths for their few minutes of sexual pleasure, which destroys the victim's complete life. Only a few women gather the courage to live their life with dignity irrespective of past experience.

6. RESEARCH METHODOLOGY

Research Design- The descriptive study.

Source of data- A review of various studies done. This study is based on the secondary data obtained from the various research papers, articles and internet sites.

Limitation of the study- The study is conducted only by collecting secondary data.

Objective of the study- Overviewing the changes and upliftment brought in our legal systems in providing justice to rape victims and also an analysis of rape: one of the biggest problem in India.

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