

“Glimpse of Redefining the Rape laws in India: a constructive and comparative approach”

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ABSTRACT

This paper will discuss about the current situation of rape laws in India and also about sexual harassment .This will also deal with the provisions relating to rape laws under Indian penal code 1860. Sexual harassment is nothing but the showcasing of male dominance. Given a chance , such men (those committing sexual harassment) would try fulfilling their desire. However, it also not true that each one cases of harassment are such- where the accused is guilty of conceiving the intention of a sexual activity . But it also depends on each individual case and circumstances, because it's going to rather be the case that the lady can also be guilty .

Introduction

Sexual harassment and rape are two sides of an equivalent coin. Both showcase the facility of man to dominate that of girls . Both have one victim- women. Both are barbaric in nature; but many of us extenuate harassment to rape, simply because the victims aren't physically harmed. Whereas in rape- the victim is ravished like an animal for the fulfillment of desire and lust of another man. Both have an equivalent object- to undermine the integrity of the victim, physically also as mentally.

As observed by Justice Arjit Pasayat:

"While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female."

Sexual harassment is nothing but the showcasing of male dominance. Given a chance , such men (those committing sexual harassment) would try fulfilling their desire. However, it also not true that each one cases of harassment are such- where the accused is guilty of conceiving the intention of a sexual activity . But it also depends on each individual case and circumstances, because it's going to rather be the case that the lady can also be guilty .

The question isn't whether women have the proper to bodily integrity, as this right is already adumbrated under Article.21 of the Constitution of India. Article.21, which guarantees the proper to life and liberty to men and ladies both alike- but whether it's really imperative to require a decisive step towards extirpating this evil and make the contemporary and future society a secure haven for ladies .

According to the official statistics of 1991, one woman is molested every 26 minutes. These statistics ask the reported cases. Whereas, if the unreported cases were to be included, it might be a matter of seconds- instead of minutes. investigation of Most cases aren't reported by victims due to various reasons like family pressures, the way of the police, the unreasonably long and unjust process and application of law; and therefore the resulting consequences thereof.

In instances where women have reported such illegal and unwelcome behavior, there are significant victories within the past decade approximately . Also considering the very fact the sometimes these victories are achieved after a wait of a decade approximately .

In Mrs. Rupan Deol Bajaj vs Kanwar Pal Singh Gill, a senior IAS officer, Rupan Bajaj was slapped on the posterior by the then Chief of Police, Punjab- Mr. K P S.Gill at a banquet in July 1988. Rupan Bajaj filed a suit against him, despite the general public opinion that she was blowing it out of proportion, along side the attempts by all the senior officials of the state to suppress the matter.

The Supreme Court in January, 1998 fined Mr.K P S.Gill Rs.2.5 lacs in lieu of three months Rigorous Imprisonment under Sections. 294 and 509 of the Indian legal code .

In *N Radhabai Vs. D. Ramchandran*, when Radhabai, Secretary to D Ramchandran, the then social minister for state protested against his abuse of women within the welfare institutions, he attempted to molest her, which was followed by her dismissal. The Supreme Court in 1995 passed the judgment in her favour, with back pay and perks from the date of dismissal.

Vishakas case

It was in 1997 in *Vishaka Vs. State of Rajasthan et al* that for the primary time harassment had been explicitly-legally defined as an unwelcome sexual gesture or behaviour whether directly or indirectly as

1. Sexually coloured remarks
2. Physical contact and advances
3. Showing pornography
4. A requirement or request for sexual favours
5. The other unwelcome physical, verbal/non-verbal conduct being sexual in nature.

It was during this landmark case that the harassment was identified as a separate illegal behaviour. The critical think about harassment is that the unwelcome ness of the behaviour. Thereby making the impact of such actions on the recipient more relevant instead of intent of the perpetrator- which is to be considered.

In the abovementioned case, the judgment was delivered by J.S.Verma. CJ, on behalf of Sujata Manohar and B.N.Kirpal, JJ., on a writ petition filed by Vishaka- a non Governmental organization working for gender equality by way of PIL seeking enforcement of fundamental rights of working women under Article.21 of the Constitution.

The immediate cause for filing the petition was the alleged brutal gang rape of a caseworker of Rajasthan. The Supreme Court in absence of any enacted law (which still remains absent- save the Supreme Court guidelines as stated hereunder) to supply for effective enforcement of basic human rights of gender equality and guarantee against harassment , laid down the subsequent guidelines:

1. All the employers responsible of labor place whether within the public or the private sector, should take appropriate steps to stop sexual harassment without prejudice to the generality of his obligation, he should take the subsequent steps:
 - a) Express prohibition of harassment which incorporates physical contact and advances, a requirement or request for sexual favours, sexually coloured remarks, showing pornographic or the other unwelcome physical, verbal/ non-verbal conduct of sexual nature should be noticed, published and circulated in appropriate ways.
 - b) the principles and regulations of state and public sector bodies concerning conduct and discipline should include rules prohibiting harassment and supply for appropriate penalties in such rules against the offender.
 - c) As regards private employers, steps should be taken to incorporate the aforesaid prohibitions within the Standing Orders under the economic Employment (Standing Orders) Act, 1946.
 - d) Appropriate work conditions should be provided in respect of labor leisure, health, hygiene- to further make sure that there's no hostile environment towards women and no woman should have reasonable grounds to believe that she is disadvantaged in reference to her employment.
2. Where such conduct amounts to specific offences under the Indian legal code or the other law the employer shall initiate appropriate action in accordance with the law, by making a complaint with the acceptable authority.
3. Victims of harassment should have the choice to hunt transfer of the perpetrator or their own transfer.

As stated by the Supreme Court, these guidelines are applicable to:

- a) The employer or other responsible persons or other institutions to stop harassment and to supply procedures for the resolution of complaints;

b) Women who either draw a daily salary, receive an honorarium, or add a voluntary capacity- within the government, private or organized sector come under the purview of those guidelines.

Preventive Steps:

1. Express prohibition of harassment should be notified and circulated.
2. Inclusion of prohibition of harassment within the rules and regulations of state and public sector.
3. Inclusion of prohibition of harassment within the standing orders under the economic Employment (Standing Orders) Act, 1946 by the private employers.
4. Provision should be made for appropriate work conditions for ladies .

Procedure concerning filing of complaints:

1. Employers must provide a Complaints Committee which is to be headed by a woman; of which half members should be women.
2. Complaints Committee should also include an NGO or other organization- which is conversant in harassment .
3. Complaints procedure should be time bound.
4. Confidentiality of the complaints procedure has got to be maintained.
5. Complainant or witnesses shouldn't be victimized Or discriminated against- while handling complaints.
6. The Committee should make an annual report back to the concerned department and also inform of the action (if any) taken thus far by them.

Rape laws in India

"The law of rape isn't just a couple of sentences. it's an entire book, which has clearly demarcated chapters and can't be read selectively. We cannot read the preamble and suddenly reach the last chapter and claim to possess understood and applied it." - Kiran Bedi., Joint Commissioner, Special Branch .

In the Mathura rape case, wherein Mathura- a sixteen year old tribal girl was raped by two policemen within the compound of Desai Ganj police headquarters in Chandrapur district of Maharashtra.

Her relatives, who had come to register a complaint, were patiently waiting outside whilst the heinous act was being committed within the police headquarters . When her relatives and therefore the assembled crowd threatened to burn down the police chowky, the 2 guilty policemen, Ganpat and Tukaram, reluctantly agreed to file a panchnama.

The case came for hearing on 1st June, 1974 within the sessions court. The judgment however clothed to be in favour of the accused. Mathura was accused of being a liar. it had been stated that since she was habituated to sexual activity her consent was voluntary; under the circumstances only sexual activity might be proved and not rape.

On appeal the Nagpur bench of the Bombay supreme court put aside the judgment of the Sessions Court, and sentenced the accused namely Tukaram and Ganpat to at least one and five years of rigorous imprisonment respectively. The Court held that passive submission thanks to fear induced by serious threats couldn't be construed as consent or willing sexual activity .

However, the Supreme Court again acquitted the accused policemen. The Supreme Court held that Mathura had raised no alarm; and also that there have been no visible marks of injury on her person thereby negating the struggle by her.

The Court during this case did not comprehend that a helpless resignation within the face of inevitable compulsion or the passive giving in is not any consent. However, the legal code Amendment Act, 1983 has made a statutory provision within the face of Section.114 (A) of the Evidence Act, which states that if the victim girl says that she did no consent to the sexual activity , the Court shall presume that she didn't consent.

In Mohd.Habib Vs State, the Delhi supreme court allowed a rapist to travel scot-free merely because there have been no marks of injury on his penis- which the supreme court presumed was a indication of no resistance. the foremost important facts like the age of the victim (being seven years) which she had suffered a ruptured hymen and therefore the bite marks on her body weren't considered by the supreme court . Even the eye- witnesses who witnessed this ghastly act, couldn't sway the High Courts judgment.

Another classic example of the judicial pronouncements in rape cases is that the case of Bhanwari Devi, wherein a judge remarked that the victim couldn't are raped since she was a dalit while the accused hailed from an upper caste- who wouldn't patronize sexual relations with a dalit.In another instance of conscience stirring cases, Sakina- a poor sixteen year old girl from Kerala, who was lured to Ernakulam with the promise of finding her an honest job, where she was sold and made into prostitution. There for eighteen long months she was held captive and raped by clients. Finally she was rescued by the police- working on a complaint filed by her neighbour.

With the assistance of her parents and an Advocate, Sakina filed a suit within the High Court- giving the names of the upper echelons of the bureaucracy and society of Kerala.

The suit was squashed by the Supreme Court, while observing that it's improbable to believe that a person who desired sex on payment would attend a reluctant woman; which the version of the victim wasn't so sacrosanct on be taken without any consideration.

Whereas, in State of Punjab Vs. Gurmit Singh⁸, the Supreme Court has advised the lower judiciary, that albeit the victim girl is shown to be habituated to sex, the Court shouldn't describe her to be of loose character.

Attempt to Rape:

In cases where an indecent assault is made upon the person of a woman, but where rape is not committed- the culprit is charged with Section.354 of IPC, because unless the Court is satisfied that there was determination in the accused to gratify is passion at any cost, and inspire of all resistance, such person is not charged with rape.

Section.354 of the IPC prescribes punishment for anyone who assaults or uses criminal force to any woman with an intent to outrage her modesty.

An indecent assault upon a woman is punishable under this section. Rape is punished under Section.376; but the offence under this Section is of less gravity than rape. And also because a person who is guilty of attempting rape cannot be allowed to escape with the lesser penalty of this section.

An indecent assault, i.e., an assault which right minded persons would consider as indecent- accordingly any evidence explaining the defendants conduct, or whether any admission by him or otherwise is admissible to establish whether he intended to commit an indecent assault, as is stated under Section.21 sub clause (2) of the Evidence Act, which reads:

Section.21 (2): An admission may be proved by or on behalf of the person making it, when it consists of statements of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

Impediments to Justice:

In the present circumstances when offences against women are on the rise- when young girls are raped by their doctors, by presidential guards in broad daylight, the definition of rape to be of any deterrence- falls extremely inadequate. It does not address forced penetration of objects and parts of the body into the vagina and anus; and forced oral or anal intercourse.

It also does not recognize other forms of sexual assaults- like protracted sexual assault by relatives, marital rape etc. as aggravated forms of rape. This causes grave injustice to many victims. In many cases of child rape, the child has been penetrated through fingers or by objects or been force to perform oral or anal sex; yet this is not considered rape by the Courts.

Adding to this is Section. 155(4) of the Evidence Act, which allows the victim to be questioned of her past sexual history- which the defense uses to humiliate the victim in the Courtroom.

One of the major obstacles in delivering justice in rape cases is the poor quality of investigations. The reason behind this ranges from gender bias and corruption to the general inefficiency of the police. In many cases the police have even refused to lodge the FIR or have lodged incomplete FIR.

The victims are not taken for prompt medical examination, because in cases of rape, or attempt to rape- medical examination of the victim and of the accused soon after the incident often yields a wealth of corroborative evidence. Therefore, such an opportunity should not be lost by the police.

The manner in which some courts have interpreted the law or assessed the evidence has often proved to be an obstacle also. In spite of Supreme Court judgments to the contrary, lower court judges often insist on evidence of physical resistance or marks of injuries to hold that a woman has not consented. A woman's evidence without corroboration is not considered sufficient.

The long time that is taken to complete a rape trial often by allowing senseless adjournments; and the giving of evidence by the victim in the presence of the accused and the harsh cross examination in the Court are some other major obstacles.

As observed by Krishna Iyer, J. in Rafiques case:

"When a woman is ravished, what is inflicted is not mere physical injury but the deep sense of some deathless shame judicial response to Human Rights cannot be blunted by legal bigotry."

Therefore rape laws in order to be of great deterrence, must have a cooperative victim, professional investigation, diligent prosecution; and an expeditious trial. For otherwise it shall not be the law, that fails, but the applicants, the process and application.

Failure of law reflects the failure of the society to protect and serve humanity.

In view of the above, the Supreme Court has laid down the following guidelines for the trial of rape cases:

1. The complaints of sexual assault cases should be provided with legal representation. Such a person should be well acquainted. The Advocate's role should not merely be of explaining to the victim the nature of the proceedings, to prepare for the case and assist her, but to provide her with guidance as to how she might obtain help of a different nature from other agencies- for e.g. psychiatric consultation or medical assistance.
2. Legal assistance should be provided at the police Station, since the victim may be in a distressed state. Guidance and support of a lawyer at this stage would be of great help.
3. The police should be under a duty to inform the victim of her right to a counsel before being interrogated.
4. A list of lawyers willing to act in these cases should be kept at the police station.
5. Advocates shall be appointed by the Court on an application by the police at the earliest, but in order that the victim is not questioned without one, the Advocate shall be authorized to act at the police Station before leave of the Court is sought or obtained.
6. In all rape trials, anonymity of the victim must be maintained.
7. It is necessary to setup Criminal Injuries Compensation Board with regard to the Directive Principles contained under Article. 38(1) of the Constitution of India. As some victims also incur Substantial losses.
8. Compensation for the victims shall be awarded by the Court on the conviction of the offender and by the Criminal Injuries Compensation Board- whether or not a conviction has taken place. The Board will take into account pain, suffering, shock as well as loss of earnings due to pregnancy and child birth if this accrued as a result of rape.

The National Commission for Women be asked to frame schemes for compensation and rehabilitation to ensure justice to the victims of such crimes.

As observed by Justice Saghir Ahmad, "Unfortunately a woman in our country belongs to a class or group of society who are in an disadvantaged position on account of several social barriers and impediments and have therefore, been victims of tyranny at the hands of men with whom they, unfortunately, under the Constitution enjoy equal status."

Conclusion:

The courts and the legislature have to make many changes if the laws of rape are to be any deterrence. The sentence of punishment, which normally ranges from one to ten years, where on an average most convicts get away with three to four years of rigorous imprisonment with a very small fine; and in some cases, where the accused is resourceful or influential- may even expiate by paying huge amounts of money and get exculpated. The courts have to comprehend the fact that these conscienceless criminals- who sometimes even beat and torture their victims- who even include small children, are not going to be deterred or ennobled by such a small time of imprisonment. Therefore, in the best interest of justice and the society, these criminals should be sentenced to life imprisonment.]

However, if they truly have realized their mistake and wish to return to society, the Court and jail authorities may leave such men on parole; but only after they have served a minimum of half the sentence imposed on them.

It is outright clear that sexual offences are to be excoriated, but if death sentence is given to such convicts- so as to deter the rest, then no doubt that the graph of rape cases will come down considerably- but it may also happen that those who commit such offences- simply to leave no witnesses or evidence, may even kill their victims and dispose off their bodies (whereas it is observed that in most cases- it is the victim who is the only source of evidence in most cases), thereby frustrating the main object of the Indian Penal Code and the legislature.

References

1. http://www.legalserviceindia.com/articles/rape_laws.htm
2. Apparel Export Promotion Council Vs. AK.Chopra AIR, 1999 S.C 625
3. (1991) 4 ALL ER 481 (HL)
4. Delhi Domestic Working Womens Forum Vs. UOI (1995) 1 SCC 14 Published: Dated: 30/12/2003
5. (1991) 1 SCC 57
6. <http://www.legalservicesindia.com/article/880/Change-in-definition-of-Rape-in-India.html>
7. "Marital rape and Indian Legal scenario" by PRIYANKA RATH is a 5th year law student at Symbiosis Law School, Pune ibid
8. <http://mha.nic.in/pdfs/CriminalLawAmendmendAct,2005.pdf> accessed on 30th Oct,2011