

RESEARCH ARTICLE



ISSN:2394-9724

RAPE OF WOMEN AND INDIAN LEGAL SYSTEM

R.N.MANGOLI¹, MOHAMMED SUBHAN ATTAR^{2*}

¹ Associate Professor, School of Criminology & Criminal Justice, RCU, Belagavi

² Junior Research Fellow, DoS in Criminology & Forensic Science KU, Dharwad



Dr.R.N.Mangoli

ABSTRACT

The 2012 is ended with a heinous incident occurred with a 23 year Physiotherapist Student at Delhi of Dec 16, 2012. The incident has shaken the consciousness of Indian Citizens. The impact of the incident was so grave that the general public from the cross section of the society emerged with full of pain and anger, pressing the Government for the speed up the slow process of Justice System. The National Crime Records Bureau report 2011 show that between 1953 and 2011, the incidence of rape increased enormously by 873 per cent, which is three-and-a-half times faster than the incident murder.

By seeing the alarmingly increasing violence against women in recent past, the Indian youth awaken and set into motion across the country for the immediate rein in by reforming the existing Criminal Law of the Land with harsh and deterrent punishments for such inhuman rapists by enacting a strong, practicable and implementable suitable law without fear and favor. The protection of women today has become challenge to all the State as well as Central Government.

The present paper tries to explore the main shortcomings of Indian Legal System in the protection, safety and security of the women.

Key Words: Women Protection, Deterrence Punishment, Indian Legal System and Rape



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INTRODUCTION

Across the country, people are expressing their grief over the death of the 23 year old gang rape and murder in New Delhi through procession, demonstration, peaceful march by holding placards, demanding to strengthen the existing laws with harsher punishment and speedier justice in rape cases. It is now like a litmus test of the leadership either it may be a Politician, Legislature, Police or Judicial fraternity. Delhi (572) has more rapes than Mumbai (221), Kolkata (46), Chennai (76), Bangalore (97) and Hyderabad (59), the next five biggest cities in India (Kaul 2012). These recent rates of rape incidents forced us to think seriously and put the question mark to the existing legal system in India. Presently, the Safety, Security and protection of the women is leading issue before the Indian Judicial System in the country.

Srikant Mohanty (2010) in his *Judiciary System of India* on Indian Blogger quoted the discussions of Students during group discussion on Judiciary System in India. "In India, the trail of murder case goes on for decades but in Russia justice gets done within a fortnight. Therefore, our systems need revamping." By this we



come to know the difference and delayed in delivering Justice in India. *"The sorry state of functioning is only due to the lack of modernization in disposing the cases by the courts and also unscientific inquiry by the police force in proving material as evidence. Both have to be improved."* This has actually become the major setback of our Judicial System and its functioning. *"The over use of fake evidence and witness has to stop and those indulging in providing it must be given hard punishment."* It is very clear that the use or over use of fake evidences and witnesses being extensively practiced in the day to day Justice system process, which is the gross violation by the protector of the law itself. Such practices should be immediately stopped, only then can be ensuring the Justice unto all.

Wherever, the courts in India have performed not satisfactorily due to lack of evidences, media and public conscious showed remarkable courage by again knocking on the door of it to deliver the justice (Srikant Mohanty 2010). Today, with the incident Delhi rape and Murder case the mind set of society has changed. Society is now demanding the harsh penalty for a rapist.

Objectives of the Study

- To know the growing incidents of rapes in India. .
- To understand why and what makes the male to commit rape of a woman.
- To analyze the Government's stand on the protection, safety and security of Indian women.
- To suggest suitable measures to control the incidents of rape in India.

Methodology

For the purpose of present study and analyses, the data being extensively collected from the Books, Journals, Magazines, Media like News Channel Reports, leading News Paper articles available on Internet and Websites, NCRB Reports etc.

The Growing Incidents of Rape in India

The sharp growing incidents of rape in India (873 %) from 1953 and 2011, increased enormously, which is three-and-a-half times faster than the incident murder. Apart from various sections in the Indian Penal Code, there are other important legislative measures that provide protection and legal remedies to women like the Protection of Women from Domestic Violence Act, the Dowry Prohibition Act etc. But still the incidents of rapes are increasing day by day without any fear and deterrent of law of the land. *"The laws are effective enough to protect women, but it is the lack of awareness that is responsible for increasing crime against women. We need a major change in the mindset of our society to deal with these issues,"* said National Commission for Women member Yasmin Abrar (IANS 2008).

"In India, a woman is raped every 22 minutes, and a bride burnt for dowry every 58 minutes. The police in the year of 2012 registered 42,968 cases of molestation of women a figure that's about 80 percent higher than the number of rapes. The number of crimes recorded against women, including sexual harassment, cruelty by the husband or his relatives, kidnapping or abduction, and human trafficking, exceeds 2, 61,000" (Rediff.com 2012).

Functions of Judicial System in India

The slow functions of courts

The slow functioning of Indian court is because of cross examination of offences and manual processing of prosecution take much time in the court. The defending lawyers deliberately delay the work of the court in order to go through the minute details of the cases and try to use every help of loop holes in the law to win the case. Whatever may be the seriousness nature of the case the time keeps on going, ultimately the general public slowly forgets the case. In the mean time, the important witnesses turn hostile due to the slow and arduous nature of work, which eventually benefited to the accused offenders.

The critical role of Prosecution

The prosecution is totally depended on the evidences and physical clues submitted by the police along the forensic expert's opinion. The evidences submitted before the court should be beyond any doubts. This process is also takes much long time from the recognized forensic laboratories.

The corruption and misconduct of Judges

The conduct and accountability of judges in India is questionable. *"Corruption exists in the Indian judiciary. A few judges are inappropriately influenced in their decision making"* said A P Shah, former chief justice of the high court of Madras and Delhi. Stating that Judges guilty of misconduct should face prosecution, he said judicial independence should not protect a judge from investigation and censure for a valid charge (Subramani 2012).

According to Transparency International, judicial corruption in India is attributable to factors such as *"delays in the disposal of cases, shortage of judges and complex procedures, all of which are exacerbated by a preponderance of new laws"* (Bidwai 2007).

The Supreme court of India

General public from the cross section of Indian society still have faith in the functioning of supreme court of India. The democratic country like ours transparency is most important for a free society, which were closed from public view in the name of Independence. People still have the faith in the functioning of Supreme Court of India. Literally it is most sacred institution for its creditability and clarity in settling all kinds of legal disputes. It has got the highest trust of the public for giving social justice. That is only last resort and ray of hope to get true justice for all of us in India.

Pendency of Cases in Indian Courts

Pendency of cases across Indian courts has increased by 38% in the last decade. About 55,000 cases are currently pending with the Supreme Court, 42 lakh with High Courts and 2.8 crore with subordinate courts. Pendency has increased by 148% in the Supreme Court, 53% in High Courts and 36% in subordinate courts in the last 10 years (Kumar PRS 2011). It is really a serious threat to the common man, who has to wait years together to get justice.

Number of Under-trials in Indian Jails

Number of under-trials in Indian Jails is double that of convicts. In June 2009, there were 3.8 lakh prisoners in Jails. Of these 2.6 lakh were under-trials. Of the under-trials, several inmates have been in jail for many years, in large measure because of delays in the justice delivery system. In early 2010, the government had launched a mission to reduce the number of under trail prisoners in jails. Under this initiative, several cases related to under-trials have been taken up. This is also expected to help in decongestion of prisons. At an all-India level, the number of prisoners in Indian Jails is 3.8 lakh, which is 127% of the built capacity (Kumar PRS 2011). Delaying in decision of the case is also an additional burden on public ex-chequer. Therefore, need to do good strategies for speedy trials.

Need of All-round Improvements in Indian Courts

Recently, some measures have been taken by the government to facilitate expeditious disposal of cases. These include schemes for computerization, infrastructural augmentation, promotion of Alternate Dispute Resolution mechanisms, Lok Adalats etc. Despite these initiatives, the rate of case disposal has not kept pace with the rate of case institution. As a result, the total number of pending cases has increased. Between October 2009 and October 2010, subordinate courts settled 1.73 crore cases as compared to 1.24 crore in 1999, an increase of 49 lakh. During the same period, the fresh cases filed increased by 52 lakh (Kumar PRS 2011).

From the above mentioned data it is clear that in spite of some measures taken by the government, the backlog is still increasing. Therefore, there is now urgent need to pin point the main shortcoming of the problems.

Rape of Women and

Impact of Rape on Victim

Rape is a devastating crime. Some women are badly injured. Some become pregnant. Some contract HIV. But the emotional trauma can be worse than any physical injury. Women who are raped have nightmares, panic attacks, waves of self-doubt, an overwhelming sense of distrust. The lives of women who are raped are



forever changed. Some say they will never be the same that it is like dying (Dickson 1996). Effects and aftermath of rape can include both physical trauma and psychological trauma. Whatever may be the personality and nature of women, it has its long lasting impact on rape victim which cannot be wipeout easily.

What Motivates Men to Commit Rape?

Rape can be categorized in different ways: for example, by reference to the situation in which it occurs, by the identity or characteristics of the victim, and by the identity or characteristics of the perpetrator. Nicholas Groth has described several different types of rape. Rape of women by men has occurred throughout recorded history and across cultures. There is no single theory that conclusively explains the causes of sexual violence; the motives of perpetrators can be multi-factorial and are the subject of debate. Researchers have attempted to explain the motivations in terms of socioeconomics, anger, power, sadism, sexual pleasure, psychopath, ethical standards, attitudes toward the victims and evolutionary pressures (Wikipedia, Free Encyclopedia).

"The fact is testosterone is a real kick-starter for violence," offers biologist Ghiglieri. "It's a kick starter for every male trait, not just violence; it is the responsible hormone for making males. It does affect behavior, it actually forces aggressive behavior. Of course, as humans we do have the choice as individuals whether we are aggressive or not. But the fact is testosterone does affect male attitudes and the propensities to violence" (Dickson 1996).

Michael Kimmel is a sociologist at the State University of New York who has received international recognition for his work on men and masculinity. He says violent men often view their actions as revenge or retaliation. *"They say, women have power over me because they're beautiful and sexual and I want them and they elicit that and I feel powerless,"* he says. *"Just listen for a minute to the way in which we describe women's beauty and sexuality. We describe it as violence against us. She is a knock-out, a bomb-shell, dressed to kill, a femme fatale, stunning, ravishing. I mean all of these are words of violence against us. It's like, wow, she knocked me out. So the violence then, or the aggression or the sexual violence is often a way to retaliate"* (Dickson 1996).

What are the main Causes of Rape Crimes?

Young men are often exposed to sex primarily through film songs choreographed to suggestive movements, through "item numbers", or through pornography on the Internet and in books. They are constantly in search of objects of carnal desire whom they must conquer by showing themselves off as desirable through power and aggression (Bidwai 2012).

The media, biology and culture may be contributing factors, but the majority of men, those who are the product of the same biology, the same culture, don't rape women. The causes of individual pathology are far more complicated. To understand rape, it's important to look at the men who rape. According to Ghiglieri, approximately 90 percent of convicted rapists are young men, most of them troubled. Ron Sanchez says sex offenders cut across all racial, economic and social lines. Convicted sex offenders include physicians, truck drivers, utility workers, and teachers, single men and married men with children. Yet Sanchez sees some general patterns. Rapists tend to be antisocial. Many have a mixed criminal history and a pattern of victimizing people. They're aggressive and have problems controlling their anger. They lack adequate communication skills which contribute to their feelings of rage and frustration. They're often sensitive to rejection and insecure about their own masculinity. They also have distorted views about women and sex. Most have been sexually deviant since adolescence. One thing universally common to rapists is that they don't think about what their victim goes through. "As you can imagine, committing that type of crime against another human being requires a tremendous amount of detachment, of dehumanizing that individual," says Sanchez (Dickson 1996).

RESULTS AND DISCUSSION

At this moment the nation is passing through from very terrible state of affairs, as the incidents of sexual assaults and molestation is continuously reporting by the media from different part of the country,



occurring in almost all the states including urban as well as rural areas. Presently, it has become a very big social menace in the country, from safety and security of women and girl children point of view.

The major setback in our Justice System is the pace of Legal Processes is so slow from filing the first information report, Police investigation, inquiry, forensic reports to trail in courts that the Victim of Rape will ultimately gives up all hopes of getting Justice within time.

How to Control Rape Crimes?

How to control growing menace of Rape Crime is the Biggest Challenge before the Nation today. Particularly after the 16th Dec, 2012, incidence shook the conscience of the nation. By seeing the processions, demonstrations and peace march, displaying with placards, demanding the Death Penalty for rapist, Chemical Castration, speediest handling the rape cases in courts ultimately pressurizing for the immediate changing the Criminal Law of the Land with sufficient deterrent penalties for the rapist.

If we are really serious about curbing this kind of violence against women, most experts say the punishment for such crimes must be harsh. *"If a rapist gets away Scott free or gets away with minor punishment, that means rape is a viable sexual strategy for a large number of men. Rape is inevitable if we don't punish it,"* says Ghiglieri (Dickson 1996).

Role of Media in sensitizing the issue

The Media and the social networking have really played a very crucial role in sensitizing the issues of sexual assaults in different part of the country. Particularly, the 16th Dec, 2012 Delhi rape issue ignites the youth of the country to fight against the old laws of the country. This fire of anger spread and reached within no time across all the corners of the country and they expressed their anger in the form of agitations, demonstrations and candle marches. The protesters are demanding to hang the rapists. The home minister, Sushil Kumar Shinde said in a statement that "the government will take steps to amend the criminal law so that the death penalty could be applied to particular cases of rape like this one". Even the leader of the opposition, Sushma Swaraj, also favored capital punishment for the rape suspects. Only demanding for the harsh and deterrent punishment is not sufficed unless we study and measure the repercussion of such changes in laws.

Action plan for curbing sexual offences

Resultantly, in order to regain the confidence of people, the Government of India has done some strategies to amend the law of the land as demanded by protesters and some politicians by appointing a Justice Verma Committee on Anti Rape Laws as an action plan for curbing the sexual offences in the country.

For this an all round development is needed, starting from the adequate number of Judges to be filled up, adequate infrastructures to be provided along with staff and continuous hearing of the cases without unnecessary delay and adjournments, adequate training to police, judges and lawyers to be provided in sexual harassment cases.

In order to contain the growing menace of Sexual assault against women, some state governments have initiated certain changes in the law and order situation in the respective states. Amongst them Tamil Nadu Chief Minister Jayalalithaa has become the first to unveil an action plan for curbing sexual offences against women. In a 13-point plan, Chief Minister Jayalalithaa on Tuesday mooted severe punishments like death penalty and chemical castration for sexual offenders through amendments in Central Acts. Her government would set up fast track Mahila courts in each district to deal with sexual crimes against women, appoint women investigating officers and prosecutors to make the police probe and trial more gender-sensitive. Efforts would be made to expedite the trial by holding daily hearings. The Goondas Act, a preventive detention law, would be amended to include sexual offenders under the Act's purview.

Sexual offences against women would be considered grave crimes henceforth; investigation would be supervised by deputy superintendents of police. Women inspectors, or in their absence, women sub-inspectors would assist the enquiry. Superintendents of police and Deputy Inspectors General would conduct a monthly review of such cases. IGs would submit a report in 15 days on the number of cases of sexual crime



under investigation and pending in courts to the Additional Director General of Police (Law and Order) (The Hindu 2013).

The other state in the country should imitate from the Action Plan from the Tamil Nadu, if they are serious about in safety, security and protection of women of their respective states.

Need to Conduct a Nationwide Survey

Although, the Government of India has been appointed Justice Verma Commission a three member committee to prepare an Anti Rape Laws in the country but drafting an Anti Rape Laws just based on Emails and fax messages received from the public within a span of short time given latest by 5th of Jan 2013 is insufficient unless it has to be conducted a nationwide cross sectional survey by including the social scientists like Sociologist, Criminologist, Psychologist and Social Work Professionals. Only then the acceptable and more satisfied laws can be enacted with the consensus of General public in the nation.

"We currently have approximately 40,000 cases of rape pending in different courts in the country, while we have only given 46 death penalties so far since 1947" (Thirani 2012). This depicts the ground reality in dealing with sexual assault cases in the country. The major setback in our Justice System is the pace of Legal Processes is so slow from filing the first information report, Police investigation, inquiry, forensic reports to trail in courts that the Victim of Rape will ultimately gives up all hopes of getting Justice within time.

Thus, we would like to strongly suggest here that as it is the Government who has to look after the welfare of its citizen then it is the duty of the respective Governments to make the victims of rape be fully aware about their rights, so that the victims of rape and sexual assault can pursue justice through the legal system and the women who have experienced such crimes also have the right to know about the laws which offers safety, security and protection and also to seek compensation for the harm they have suffered as a result of the rape and sexual assault.

REFERENCES

- Bidwai Praful (2007). INDIA: Legal System in the Dock. Inter Press New Agency. Retrieved on Jan 03, 2013.
- Dickson Mary (1996). Rape, the Most Intimate of Crimes <http://www.pbs.org/kued/nosafeplace/articles/rapefeat.html> retrieved on Jan 01, 2013.
- Kumar Rohit (2011). <http://www.prsindia.org/parliamenttrack/vital-stats/pendency-of-cases-in-indian-courts-2011-1837/> retrieved on Jan 03, 2013.
- Kaul Vivek (2012). Why women will continue to be raped in India (Part 2). Firstpost.com Dec 21, 2012 retrieved on Jan 01, 2013.
- Mohanty Srikant (2010) <http://indianblogger.com/judiciary-system-of-india/> retrieved on Jan 01, 2013.
- Subramani A (2012). 'Corrupt Judges Must Face the Music' TNN Mar 18, 2012, 02.49AM IST Retrieved on Jan 03, 2013.
- Thirani Neha (2012). Debating the Death Penalty for Rape in India. The New York Time/ International Herald Tribune Global Edition India Friday Dec 12, 2012. retrieved on Jan 01, 2013.
- http://www.dnaindia.com/india/report_a-woman-becomes-a-crime-victim-every-three-minutes_1216619 Dec 25, 2008, 13:03 IST IANS Retrieved on Jan 02, 2013.
- <http://ncrb.nic.in/CD-CII2011/cii-2011/Snapshots-5311.pdf> retrieved on Jan 02, 2013
- <http://www.rediff.com/news/column/violence-against-women-blame-our-prejudices-not-the-victim/20120720.htm> retrieved on Jan 03, 2013.
- http://supremecourtsofindia.nic.in/courtnews/2011_issue_4.pdf retrieved on Jan 03, 2013
- <http://www.thehindu.com/news/national/ncw-welcomes-jayalalithas-decision/article4262141.ece> retrieved Jan 02, 2013.
- http://en.wikipedia.org/wiki/Law_of_India retrieved on Jan 03, 2013.