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The Ghastly Act of Rape, Aftermaths, Delayed and Tardy Issues Involved in India with Respect to Nirbhaya's Case

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ABSTRACT

The life of the woman is surrounded by incessant violence and rape inflicted on her is the most horrendous act which is beyond description. It is ever mounting and ever increasing, this in spite the fact that the punishment relating to it has been made stern after Nirbhaya's case. The case itself involved lot of hue and cry, bafflement and bemusement and in spite of the fact that it had to be steadily disposed of it took 8 long years for the parents of the victims to get justice. Was the law responsible for such an inordinate delay? Were there any lacunae in our legal system? What actually caused the delay in bringing the culprits to be executed? All these quandaries and issues are discussed in the present article

Keywords: Violence, Women, Rape, Legal Issues, Remedies

Introduction

In this era of 21st century, one thing that we boast and conceit is the equality clause¹ provided to us in the constitution of India. The Article speaks about no bigotry between men and women. In spite of the fact the Article speaks so, it is continuously and unceasingly observed that women face incessant and immeasurable violence² during her life time. She is subjected to assorted violence like dowry death³,

¹ Article 14, Constitution, India: The State shall not deny to person equality before law and equal protection of Law within territory of India. Thus, everyone is equal and there is no bigotry on the basis of religion, race, caste, sex etc

² Violence in a layman's language is causing bodily or psychological impairment or both types of destructions on another person. According to Encyclopaedia of Crime and Justice² "violence is a general term referring to all types of behaviour either threatened or actual, that result in the damage or destruction of property or the injury or death of an individual." See Encyclopaedia of Crime and Justice, Vol. 4, 1983, pp. 1618-19.

Black's Law Dictionary, "violence means unjust or unwarranted use of force usually accompanied by fury, vehemence, or outrage physical force unlawfully exercised with the intent to harm." See Black's Law Dictionary, VIIth ed, 1999, p. 1564

L.B. Curzon's Dictionary of law, violence means, "any conduct so that it includes violent conduct towards property as well as towards persons, and it is not restricted to conduct causing or intended to cause injury or damage but includes any other violent conduct." See Curzon, L.B, Dictionary of Law, IVth ed. 1994, p. 403

³ Section 304-B, IPC (1)Where the death of woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called 'dowry death' and such husband or relative shall be deemed to have caused her death. Explanation: For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961. (2) Whoever commits dowry-death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

marital rape⁴, female foeticide⁵, acid attack⁶, eve teasing⁷, domestic violence⁸, cruelty under section 498-A,⁹ IPC, voyeurism¹⁰, stalking¹¹, plight of surrogate women¹² etc, to name a few. Out of these assorted violence inflicted on her, one violence which cannot be lost sight of and which has been in

⁴ Marital Rape is forceful sexual act committed by husband towards his wife. Though seems to be awkward, but it is very much prevalent in the society and the worst part is there is no legal remedy available to the wife on account of this. Even after Criminal Law (Amendment) Act, 2013, this has still not been considered a crime, in spite of the fact that Verma committee recommended that it should be made an offence. Section 375, IPC talks about rape but does not talk about marital rape

⁵ Female foeticide is the act of killing female foetus. The yearning to have a male child is the biggest reason for killing of the female foetus. It is very much practised in India in spite of the fact that Pre Conception and Pre Natal Diagnostic Technique Act, 1994 is very much prevalent in India .

⁶ **Acid attack is the most reprehensible act that is mostly committed against the women. Though it is also committed against men but women are mostly the target of it. She not only suffers physically and psychologically but also fiscally and emotionally, not to talk of isolation from the society. Patriarchal society, cheap availability of acids, violence within home, retribution by spurned lovers, honour killings are the main causes for throwing of acids on the victims. 326 A, 326 B, 100 clause seventhly in IPC deal with acid attack.**

⁷ Eve teasing in a layman's language are the smutty and lascivious comments passed by males to females in a public place. It causes lot of distress and uneasiness to women.

⁸ Domestic violence is the violence which takes place at home. Though it can happen to anyone but it is mostly practised against the women. In order to deal with this, Protection of Women From Domestic Violence Act, 2005 was enacted which is totally women pal

⁹ Section 498-A, IPC: Section 498-A, IPC: "Husband or relative of husband of a woman subjecting her to cruelty: Whoever, being the husband or relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation-for the purpose of this section, "cruelty" means- (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand." This section is non-bailable, non-compoundable and cognizable.

¹⁰ Section 354C, IPC: Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine. Explanations (1)For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public. (2) Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

¹¹ Section 354-D, IPC: (1) Any man who – 1 follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or 2 monitors the use by a woman of the internet, email or any other form of electronic communication ,commits the offence of stalking; Provided that such conduct shall not amount to stalking if the man who pursued it proves that – 1 it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or 2 it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or 3 in the particular circumstances such conduct was reasonable and justified. (2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

¹² A Surrogate women who bears child for infertile couples in order to make them gleeful has to bear so many tortures not only physically, mentally but also there are lot many health hazards involved in the cumbersome procedure of surrogacy

news and is a burning issue specifically after Nirbhaya's case¹³ is the awful and atrocious act of rape. This specific form of gender violence is somewhat unlike from the other rampant forms of violence as here the victim is denounced and stigmatized more than the culprit¹⁴. The grounds and reasons for rape are intensely engrained in our social structure.¹⁵

Meaning

Rape is a horrifying crime, but what is the meaning of this horrifying act of rape? ¹⁶ Rape in a layman's language is forceful sexual intercourse with a person of opposite sex. Initially, the word 'rape' was similar to latin term rapine or rapier and denoted to the more general violations-looting, destruction, enslavement, taking away and capture of citizens inflicted upon tribe, town, city or country during war.¹⁷ Sexual association with it came much later. In order to constitute rape, there is a use of power or deceitfulness.

Rape is linked with power, that is, the power that men enjoyed in society....
Rape brings out, and enlarges opposition between the sexes nakedly, unlike other forms of gender based oppression, such as lower wages for women.
Rape, and the fear of rape therefore is an instrument for terrorising and paralysing women, contributing to a low sense of self-worth.¹⁸

Metzger stated that rape is depersonalization¹⁹, Burgess and Holmstrom²⁰ and Millett²¹ describe rape as violence, MacKinnon²² emphasises rape as sex without consensus, and Sheffield²³ stresses rape as fear. Weis and Borges²⁴ states that 'rape is a total attack against the whole person, affecting the victim's physical, psychological and social identity'.

Rape is therefore, aggressive capture or the ravishment of a woman without taking her consensus. It could be by vigour, terror or swindle. After the horrendous act of rape, the woman is not only physically affected but psychologically also, she is ravished. Of all crimes ubiquitous against

¹³ The victim Jyoti Singh dubbed Nirbhaya, was gang raped and tortured to an extent that led to her death in December, 2012. The case created lot of havoc and led to the Criminal Law Amendment Act, 2013 where definition of rape under section 375 was modified and punishment for rape was made stringent

¹⁴ Sarbani Guha Ghosal and Sarbani Guha Ghosa, Socio-Political Dimensions of Rape, *The Indian Journal of Political Science*, Vol. 70, No. 1 (2009), at 107

¹⁵ Adfer Rashid Shah, *The Culture of Rape:: Understanding Delhi Rape Horror and Underlying Perspectives*, *The Tibet Journal*, Vol. 38, No. 1-2 (Spring-Summer 2013), p 48

¹⁶ Cathy Winkler, *Rape as Social Murder*, *Anthropology Today*, Vol. 7, No. 3 (Jun., 1991), p 12

¹⁷ Available at <http://en.wikipedia>. See Stellina Jolly and M. Raste, *Rape and Marriage : Reflections on the past, Present and Future*, *Journal of the Indian Law Institute*, Vol. 48, No. 2 (April-June 2006), p 279

¹⁸ Gothoskar, S. (1980) 'Politics of rape', Paper presented at National Conference on Perspectives for Women's Liberation, Bombay, 1 November. See Geetanjali Gangoli, *Controlling women's sexuality: rape law in India*, Bristol University Press, Policy Press. (2011) at 101

¹⁹ Metzger, Deena. 1976. It is Always the Woman Who is Raped. *Am. J. of Psychiatry* 133(4) at 406. See Cathy Winkler, *Rape as Social Murder*, *Anthropology Today*, Vol. 7, No. 3 (Jun., 1991), p 12

²⁰ Burgess, Ann Wolbert, and Lynda Lyttle Holmstrom. 1974b. *Rape: Victims of Crisis*. Bowie, MD: Prentice-Hall. See Cathy Winkler, *Rape as Social Murder*, *Anthropology Today*, Vol. 7, No. 3 (Jun., 1991), p 12

²¹ Millett, Kate. 1971. *The Prostitution Papers: A Candid Dialogue*. NY: Basic. See Cathy Winkler, *Rape as Social Murder*, *Anthropology Today*, Vol. 7, No. 3 (Jun., 1991), p 12

²² MacKinnon, Catharine A. 1982. *Feminism, Marxism, Method, and the State: An Agenda for Theory*. *Signs* 7(3) at 532. See Cathy Winkler, *Rape as Social Murder*, *Anthropology Today*, Vol. 7, No. 3 (Jun., 1991), p 12

²³ Sheffield, Carole J. 1987 'Sexual Terrorism: The Social Control of Women'. In *Analyzing Gender: A Handbook of Social Science Research*. Beth B. Hess and Myra M. Ferree, eds. Newbury Park: Sage. See Cathy Winkler, *Rape as Social Murder*, *Anthropology Today*, Vol. 7, No. 3 (Jun., 1991), p 12

²⁴ Weis, Kurt, and Sandra S. Borges. 1973. *Victimology and Rape: The Case of the Legitimate Victim*. *Issues in Criminology* at 72. See Cathy Winkler, *Rape as Social Murder*, *Anthropology Today*, Vol. 7, No. 3 (Jun., 1991), p 12

women, rape is considered to be the most atrocious and insensitive act of fleshly violence and violence against a wretched woman. It is not only a fierce attack on the honour and self-respect of a woman but also excessively disdains her legitimate control over her body. It smashes the foundations of the lives ethics²⁵. Rape is considered as the most solemn crime committed against person after murder.. But the information relating to rape frequency comes from victims who are very loathed to categorize their experience as rape²⁶

Forms

Rape could be in the following forms:

Acquaintance Rape: This rape is committed by being who is not an outsider but a known person. The acquaintance could be through family or it could be through victim herself. Thus, the general perception of people that rape is usually committed by strangers is not applicable in cases on acquaintance rape. The main reason behind this kind of rape is that the victim is easily accessible to the culprit. The perpetrator could employ bodily or vocal threats, intoxicate and put in inebriated stage, use drugs or even emotionally and fervently blackmail a person

Stranger Rape: This rape is committed by person who is not known to the victim. It is different from acquaintance rape. Here the perpetrator usually employ bodily and vocal intimidations in order to control the victim and uses force on her. This form of rape is also widely ubiquitous in our society. The victims are tormented, raped and even killed in some cases. Nirbhaya's case²⁷ in December 2012 is a perfect example of this type of rape

Partner or Marital Rape: Rape of wife by her husband is marital rape. Widely prevalent in India but not that reported. Under this rape, a husband could batter his wife, if she refuses to have sex or could use that much force so that she surrenders herself or could even employ sadistic approach to make her surrender before him. This could even involve him urinating on her etc. It is not criminalized in India, though criminalized in countries abroad. This type of rape also like other forms have lasting enduring effects on the minds of the victim but it is taken nonchalantly by our society.

Causal Factor

One of the most pivotal reasons for infliction of rape is the male domineering and male dictatorial society that we live in. We are living in a patriarchal society. People are very amused at the birth of the male child but the same scenario is not there in the case of the birth of the girl child. where bigotry is seen in the raising up of a girl and boy in the family. The variation in their brought up starts the moment birth of a child takes place in the family. The moment a child is born, the variation can be seen by taking a look at the amusement and delight on the faces of the people. The feeling that the girl is a momentary member and boys are lasting member in the family, giving skimpy education to girls as compared to boys, to rear girls is like watering neighbor's plant, women's role is to look after household chores and bear and bring up children, intelligentsia has no role to play in her life etc. are some of the reasons that demeans the position of women in the society. The society is very much responsible for degrading her position. . Since childhood, women know the importance of the word 'he' as it plays a very imperative role in her life. This inferiority is ingrained since her birth and continues till her last breadth where every now and then she has to bear the brunt of the society. We are living in such a society that the women are made culpable of all things and men are absolved of all things even if it is

²⁵ K.I. Vibhute, Victims of Rape and their Right to Live with Human Dignity and to Be Compensated: Legislative and Judicial Responses in India, *Journal of the Indian Law Institute*, Vol. 41, No. 2 (April-June 1999) at 222

²⁶ Karen Bacher & Mary Koss, Rape, in Judith Worell (ed) *Encyclopaedia of Women & Gender*, Academic Press, USA, 2001. See Sarbani Guha Ghosal and Sarbani Guha Ghosa, *Socio-Political Dimensions of Rape*, *The Indian Journal of Political Science*, Vol. 70, No. 1 (2009), at 109

²⁷Supra Note 13

the fault of males. If a person beats a woman, the usual reaction is that the woman must have triggered him, if a woman is raped, the reaction is that the woman must have excited and lured him etc.

Kavita Krishnan, an activist secretary of the All India Progressive Women's Association stated:

“Though rapes happen all over the world, the patriarchal entitlement among Indian males to ‘control’ the lives of their women (wives, sisters, daughters) breeds many problems. According to studies, 50 percent of Indian women can’t step out of their homes without seeking permission from a male member,”²⁸ Secondly, our ancient scriptures are also responsible for the subservient position of woman. Neither could driving away of pregnant Sita by Lord Rama could be less fiercely nor could putting Draupadi on the gambling stake be less barbaric and brutal. Rape of Rambha by Ravana of his daughter in law, who is highly worshiped in some parts of country is another instance of degrading position of women. Another instance could be of Raja Harishchandra who, for a paltry amount of money sold his wife Taramati are few instances from many. Apart from this media and film industries have also played a very significant role in portraying and representing the febleness of Indian women. Generally, people get amused and attracted towards things where there is exposure and our film industry is the one which satisfies this lust of the people by creating lewd, smutty and lascivious scenes. People get amused on the undignified impulses of the women. The exposure which is made in the beauty contest, fashion show etc. also objectifies men’s lust. So, women are usually considered to be the object of lust by these men, thus lowering their position²⁹.

Effects

The enduring effects of rape is beyond description and too awful for words. It is considered to be the most vicious kind of violence. The browbeaten woman not only suffers physically but rape also causes psychological disorders in her personality. The bodily effects of marital rape may include damages to the vaginal and anal areas, gynae quandaries, stretching, leaking urine, bleeding, soreness, missed menstrual periods, bruises, cracked bones, painful eyes, torn muscles, weariness , still births, bladder infections, sexual transmitted diseases etc, to name a few. Not only this, women also suffer psychological problems which includes lack of self- assurance, distress, nervousness, uneasiness, despair, frustration, anguish, isolation, restlessness, shock, suicidal tendencies, emotional pain, reduced mental health etc.

Thus, it can be seen that the effects that rape has on women cannot be underestimated and cannot be taken imperturbably.

Rape in India

Rape is a major societal problem.³⁰ India is not exception to it. India is a country where rape cases are mounting up, this in spite the fact that the punishment is stringent specially after Criminal Law Amendment Act, 2013. Notwithstanding mass public disgrace and remonstrations over the gang rape and heart-rending death in Delhi, rapes and attacks on women go relentless and unremitting.³¹ There are incessant number of cases being reported, though many also go unreported. Rapes are considered to be part of our environment. Due to social disgrace involved in it, only a trivial fraction of their actual occurrence comes into picture. Most of these incidents are purposely repressed by the sufferers and their relatives.³² The inability of victims to report or to indict this crime is upsetting since being the victim of accomplished rape looks much shoddier than being the victim of other tried and

²⁸ <https://thediomat.com/2020/01/addressing-rape-in-india/>. Accessed March 11th, 2021

²⁹ See generally Jyotirmay Mandal, Women and Reservation in India

³⁰ Knud S. Larsen and Ed Long, Attitudes toward Rape, *The Journal of Sex Research*, Vol. 24 (1988), p 299

³¹ Nitya Rao, Rights, Recognition and Rape, *Economic and Political Weekly*, Vol. 48, No. 7, 2013, p 18

³² Anand Teltumbde, Delhi Gang Rape Case: Some Uncomfortable Questions, *Economic and Political Weekly*, Vol. 48, No. 6, 2013, p 10

finished criminalities.³³ Of all major crimes committed worldwide, violence against women and rape in specific are perhaps the most underreported one³⁴

Nirbhaya's case³⁵ is considered to be one of the breakthrough cases. This ruthless sexual assault on the young lady committed on 16 December, 2012 stunned the country principally because of the mounting levels of violence with which it was accompanied³⁶. In this, a 23 years old woman, a physiotherapist was gang raped and simultaneously spanked by six men. The horrific incident happened in the bus. The woman was pulled to the back of bus and was trodden with rod and at the same time raped. She was tortured and persecuted by these six men which included one juvenile. A blunt object was also used for penetration. The victims were taken to Safdarjung Hospital. It was juvenile only who had sexually mistreated woman two times and had taken out her intestines. She got serious injuries in her stomach, intestines and genitals. When her health deteriorated, she was taken to Singapore for emergency treatment but regrettably she succumbed on 29th December³⁷ The occurrence created outrage and was considered widely abominable and criticized in the country as well as in overseas. People came out of their houses and staged remonstrations against the government for their inability to provide appropriate safety to the women of the country. People were so reddened and enraged that they were also not hesitant to encounter with the security. In the meanwhile all the six accused were arrested from different places in the country. A charge sheet was filed against five adults accused who were charged under murder, gang rape, attempt to murder, kidnapping, unnatural offences and dacoity.³⁸ Out of these six, one Ram Singh committed suicide inside the jail and another accused was a juvenile on the day when he committed this heinous crime. The juvenile was tried by a juvenile court which found him guilty of rape and murder under Juvenile Justice Act. He was awarded three years imprisonment which is the maximum punishment provided under the Act. The remaining four were tried in a fast track court constituted to try sexual offences. The Court convicted Mukesh, Vinay, Akshay, Pawan. Death penalty was awarded to all the four convicts by the court. The matter went in appeal to the high court. The high court also uphold the death penalty. The case went in appeal to the Supreme Court. The Supreme court also upheld death penalty to four convicts categorizing it to be a rarest of rare case. After this Mukesh goes to the Apex court under review petition against the judgment of the Supreme Court. Vinay Sharma and Pawan Kumar Gupta also moved to the Supreme Court under review petition only. The Apex court reserved the order on review filed by two condemned convicts – Vinay Sharma and Pawan Gupta. The court dismissed review pleas of three convicts. After this, the parents of the victim moved to Delhi court for grant of death warrants to the four offenders in the said case. Thereafter, Akshay went to the Supreme court seeking review petition

³³ D. G. Kilpatrick, C. L. Best, L. J. Veronen, A. E. Amick, L. A. Villapontaux, and G. A. Ruff, "Mental Health Correlates of Criminal Victimization: A Random Community Survey," *Journal of Consulting and Clinical Psychology* 53 (1985): 866-873; See Gail Steketee and Anne H. Austin, *Rape Victims and the Justice System: Utilization and Impact*, *Social Service Review*, Vol. 63, No. 2 (Jun., 1989), p 286

³⁴ UN Department of Public Information. 2011. 'Violence against Women.' DPI/2546A, November. New York: UN Department of Public Information. See Aaron Karp, Sonal Marwah and Rita Manchanda, *Unheard and Uncounted Violence against Women in India, Small Arms Survey* (2015)

³⁵ *Supra* Note 13

³⁶ Arvind Narrain, *Violation of Bodily Integrity: The Delhi Rape Case among Others*, *Economic and Political Weekly*, Vol. 48, No. 11 (MARCH 16, 2013), p 17

³⁷ Shivani Goswami & Neelu Mehra, *Juvenile Justice Systems in United States and India: Modern Scenario and Much Needed Modifications*, *Journal of Law and Criminal Justice*, Vol. 2, No. 2, p. 260

³⁸ The culprits were Ram Singh who was the bus driver, his brother, Mukesh Singh. Both of them were arrested in Rajasthan. Both of them dwelled in Ravidas camp which is a slum in South Delhi. Another culprit Pawan Gupta used to sell fruits was arrested from Bihar. Vinay Sharma, an assistant gym instructor and another accused was arrested from Uttar Pradesh and Pawan Gupta, a fruit seller, were both arrested in UP and Bihar. The fifth culprit named Akshay Thakur who came to Delhi for search of employment was arrested from Aurangabad, Bihar from where he was hailing. The minor in the case was seventeen years old was arrested from Badayun, Uttar Pradesh. All the accusers after committing this heinous crime had fled from Delhi and were arrested from the places mentioned above

of his death penalty that was awarded. In the meantime, Delhi govt seeks death warrants for implementation of death sentence to all the 4 criminals in the case. Delhi court directs Tihar authorities to provide notice to offenders to avail their left over legal remedies. Thereafter, the plea filed by Pawan Kumar Gupta that he was a juvenile at the time of inflicting crime was dismissed by the Delhi High Court. Delhi court orders death execution of the 4 convicts to take place on January 22 at 7 am in Tihar jail.³⁹ After this, the Apex court discards curative petition filed by Vinay and Mukesh Kumar. Mukesh applied for mercy plea before President. President Ram Nath Kovind denies mercy plea filed by Mukesh. On 17 January 2020, hours after the mercy petition was refuted by the president, second death warrant was granted by the Delhi court for the offenders to be hanged after a compulsory fourteen days gap to take place on 1 February at 6 a.m. Mukesh moves to the Apex court against denunciation of mercy plea. The arguments were heard by the Apex court and the verdict was reserved. Now convict Akshya Kumar goes to the Supreme Court with curative petition. Supreme Court rejects petition of Mukesh challenging rejection of his mercy plea. Supreme Court dismisses the curative plea that was filed by Akshay Kumar Singh. The Apex court also dismissed the plea that was filed by Pawan seeking review of its order refusing his juvenility claim. Delhi court now again delays the implementation of the death warrants till further order. Now Centre goes to High court against the order of the trial court. High Court reserves decision on the plea of the Centre. The High Court dismisses the plea of the Centre against trial court order and stated that all 4 accused need to be hanged together. It further directed all the 4 criminals that within a week they should follow up all legal redressals, failing which the authorities ordered to take action according to law ⁴⁰. Then, on February 17th, 2020, the third death warrant was granted by the court and the implementation date was kept as March 3rd 2020 at 5:30 am. However it did not take place on the said date. In between assorted pleas and appeals were moved by the convicts. The three convicts also applied in the international Court of Justice to put a stay on their death sentence. Finally, it was on 20 March 2020, at 5:30 a.m. that the four adult offenders were executed by hanging at Tihar Jail after lot of hue and cry. This was the chronological events that took place in this landmark case.

It was only after the landmark case of Nirbhaya that Indian Penal code was amended through Criminal Law Amendment Act, 2013 and various other provisions were added including stringent punishment.

With respect to this, Justice Verma Committee⁴¹ was created on 23rd December, 2012. The purpose of this was to bring modifications in the Criminal law. The aim was to provide for prompter and hastier trial and severer punishments for people committing heinous sexual crimes against women.

The committee with respect to rape observed that as far as rape and other sexual assault are concerned, they are an expression of influence and power by men against women. According to the committee, Rape should remain and be considered as a diverse offence. The definition of rape in IPC should be expanded to embrace other things also. Presently, it is limited to penetration of the vagina, mouth or anus only. ⁴²

The committee also talked about marital rape i.e. rape within marriage. It was of the view that marital rape should also be punishable and the husband should not be exonerated if he forces himself

³⁹ <https://www.indiatoday.in/india/story/chronology-of-events-in-nirbhaya-case-1634798-2020-01-07>. Accessed April 11th, 2021

⁴⁰ <https://www.thehindu.com/news/national/chronology-of-events-in-nirbhaya-case/article30566298.ece>. Accessed April 14th, 2021

⁴¹ The Verma committee encompassed three eminent and erudite persons. Justice J.S. Verma, former Chief Justice of the Supreme Court, Justice Leila Seth, former Judge of the High Court and Gopal Subramaniam, former Solicitor General of India

⁴² See <https://www.prsindia.org/report-summaries/justice-verma-committee-report-summary>. Accessed April 20th 2021

upon his wife. The exception to section 375 IPC absolved husband from committing rape to his wife if she was above fifteen years of age. Thus, IPC discriminated and categorized between marital rape and rape inflicted by an outsider. This bigotry should not be there. Rape is rape, whether committed by husband in marriage or by an outsider. The committee also did not approve of two fingers test to determine laxity of vaginal muscles.⁴³ The committee also stated that past experience of the person should not be considered for determining consensus of the victim. The committee did not recommend death penalty rather was in favour of life imprisonment in rape cases⁴⁴

Apart from this, the committee also suggested setting up of Rape Crisis Cell. It stated that the moment FIR relating to sexual assault is made, the said cell should be instantly informed regarding the same. The cell should be under an obligation to provide Legal assistance to the victims. Online facilities of filing of FIR should be available. Also the facilities of CCTVs should be there at the entry and in interrogative rooms of Police stations. There should be increase in the number of police personals. Jurisdiction should not play a pivotal role and police officers should be available to assist the victims of sexual offences. Training shall be imparted to the police personals to handle sexual offences. Apart from this, people who help the victims shall not be made culpable⁴⁵

According to the committee, assault or use of criminal force with intent to outrage the modesty of woman is dealt in IPC under section 354⁴⁶ and the punishment that is provided is so scanty of 2 years imprisonment. The punishment should be escalated to 5 years imprisonment or fine or both. Further, If criminal force is put on to strip a woman, the punishment should be from 3 -5years imprisonment. Apart from this, the committee recommended to annul section 509 IPC⁴⁷. The Committee has recommended that usage of words, acts or gestures that produce an unwelcome and unwanted peril of a sexual nature should be named as sexual assault and in these cases the punishment should be 1 year imprisonment or fine or both. The committee also gave recommendations with respect

⁴³ In this a doctor inserts fingers in the vagina of the woman in order to establish presence or absence of the hymen and the so called "laxity" of the vagina. See Zosia Kmietowicz, Ban "degrading" finger test after rape in India, say activists, *British Medical Journal*, Vol. 341, No. 7772 (11 September 2010) at 526; The two finger test infringes the physical and mental health of the victim of rape. Apart from being soreful, it also impersonates the original penetrative assault, causing ordeal through "re-rape." Human Rights Watch. Dignity on trial. 2010. www.hrw.org/reports/2010/09/06/dignity-trial-0; Baxi P. The medicalisation of consent and falsity: the figure of the habitu  in Indian rape law. In: Kannabiran K, ed. *The violence of normal times*. Women Unlimited, 2005: 266-311. See Nisreen Khambati, India's two finger test after rape violates women and should be eliminated from medical practice, *British Medical Journal*, Vol. 348 (12 May 2014 - 18 May 2014)

⁴⁴ Supra Note 41

⁴⁵ Ibid

⁴⁶ Section 354, IPC: Assault or criminal force to woman with intent to outrage her modesty. – Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

⁴⁷ Section 509, IPC: Word, gesture or act intended to insult the modesty of a woman. – Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

to child sexual abuse⁴⁸, trafficking⁴⁹, sexual harassment⁵⁰, offences against women in conflict areas⁵¹, acid attack⁵², education reforms⁵³, police reforms⁵⁴ and electoral reforms⁵⁵ etc.

Additionally, the definition of Rape was also amended. Presently, section 375 IPC states:

“ A man is said to commit "rape" if he:-- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or (d) applies his mouth to the vagina, anus, urethra

⁴⁸ The Verma committee on Child sexual abuse recommended that it is time to describe terms like ‘Harm’ and ‘health’ under Juvenile Justice Act, 2000. The definitions should embrace mental and corporal harm and health of the juveniles. See <https://www.prsindia.org/report-summaries/justice-verma-committee-report-summary>. Accessed April 20th 2021

⁴⁹ The committee observed that definition of trafficking was not comprehensive under Trafficking Prevention Act, 1956. The Act only prohibits trafficking in relation to the prostitution. Trafficking by vigour, intimidation or enticement should be criminalized as modification is required on slavery mentioned under the Indian Penal Code, 1860 .See <https://www.prsindia.org/report-summaries/justice-verma-committee-report-summary>. Accessed April 20th 2021

⁵⁰ The committee on sexual harassment stated that domestic workers should be comprehended within the purview of the then Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012. Under the said Bill, the committee suggested the necessity of endeavoured settlement between the complainant and respondent. The committee suggested the employer to pay recompense to the victim of sexual harassment. The committee wanted an Employment tribunal to resolve all grievances pertaining to sexual harassment against women. See <https://www.prsindia.org/report-summaries/justice-verma-committee-report-summary>. Accessed April 20th, 2021

⁵¹ The committee suggested that if the case is related to sexual offences against women for a women in conflict areas, the permission which is taken by the AFSPA from central government to begin proceedings against armed personnel should go. Armed Forces Special Powers Act(AFSPA) requires refurbishing. The obligation is to employ special commissioners to manage and prosecute for sexual offences. See <https://www.prsindia.org/report-summaries/justice-verma-committee-report-summary>. Accessed April 20th 2021

⁵² The committee was of the view that cases of acid attack should not be tried under grievous hurt, the punishment for which is 7 years imprisonment provided under the IPC. It should be made an explicit offence and the punishment should be 10 years imprisonment or life. The committee suggested that the Government should create corpus for the purpose of reimbursement of the victims. See <https://www.prsindia.org/report-summaries/justice-verma-committee-report-summary>. Accessed April 20th 2021

⁵³The Verma committee on Education reforms suggested that experience of children should not be gendered. It stated that children should be provided sex education. For gender enablement, adults literacy programs should be started See <https://www.prsindia.org/report-summaries/justice-verma-committee-report-summary> . Accessed April 20th 2021

⁵⁴ On police reforms, the committee suggested that there should be State Security Commissions to protect that state governments do not exercise impact on the state police. The Commissions should be headed by the Chief Minister or the Home Minister of the state. The purpose of the Commission would be to provide policy guidelines so that the Police do not infringe the provisions of law and act accordingly. The committee also suggested that there should also be Police Establishment Board to solve cases of all transfers, postings and promotions of officers. See <https://www.prsindia.org/report-summaries/justice-verma-committee-report-summary>. Accessed April 20th 2021

⁵⁵The Verma committee on election reforms stated that Amendment of the Representation of People Act, 1951 to be there. Currently, the Act deals with disqualification of candidates who are involved in crimes related to terrorism, untouchability, secularism, fairness of elections, sati and dowry. The committee further said that if a candidate has committed sexual offences, he/she should be made ineligible. The Committee was of the view that filing of charge sheet and cognizance by the Court were adequate for disqualification of a candidate under the Act. See <https://www.prsindia.org/report-summaries/justice-verma-committee-report-summary>. Accessed April 20th 2021

of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:

Firstly. -- Against her will.

Secondly. -- Without her consent.

Thirdly. -- With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly. -- With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. -- With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. -- With or without her consent, when she is under eighteen years of age.

Seventhly. -- When she is unable to communicate consent.

Explanation 1. -- For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2. -- Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act;

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity. Exceptions -- 1. A medical procedure or intervention shall not constitute rape; 2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."

This is the present definition of rape mentioned under section 375 provided after Criminal Law Amendment Act, 2013. Under it, a man commits rape if he enters his penis into the vagina, mouth, urethra, anus of the woman and this could be up to any degree and extent. It is not only when he himself does it but also makes another person to do with the woman. The person would also be guilty of rape even if he inserts objects or any part of the body up to any extent into the vagina, mouth, urethra or anus of the woman and does it himself or makes another person to do the same or in order to cause penetration into the vagina, urethra, anus or any other part of the body of the woman, deploys any part of the body of the woman either himself or through another person of woman or brings his mouth to the vagina, anus, urethra of a woman or makes her to bring her mouth to his penis or of any other person. The Criminal Law Amendment in 2013 widened the definition of rape and stretched it beyond penile-vaginal penetration. It embraced not only penetration by the penis of orifices other than the vagina of a woman but also penetration by objects or body parts other than the penis, into the vagina, and other orifices of a woman⁵⁶. The consent of woman is absent in all these cases or the consensus has been taken by putting her or any other person in whom she has an interest in terror of death or hurt or when her consent is taken when the man himself knows that he is not her husband and woman believes that he is her husband or when she gives her permission when she was not in her minds due to alcoholism or if she is of unsound mind or some stupefying substance has been given to her through which she is unable to know the nature and upshots of which she is giving her consent or when she is less than eighteen years of age, such a consent is immaterial or when she is not in a position to

⁵⁶ Durba Mitra and Mrinal Satish, Testing Chastity, Evidencing Rape: Impact of Medical Jurisprudence on Rape Adjudication in India, *Economic and Political Weekly*, Vol. 49, No. 41, 2014, p 52

communicate her consent. The proviso to the section states that if the woman is unable to fight against the act of penetration, it would not necessarily mean that she was agreeable to the sexual action. The section also deals with two exceptions. First, medical experiment or interference to be kept outside from the purview of rape and secondly if the husband has sexual intercourse with his wife who is not below fifteen years of age, it will not establish rape.

Though, the punishment of rape after the amendment in 2013 has aggravated, yet it is still seen that it did not have a deterrent effect and rape cases have not dwindled in India. India is one of those countries which witnesses so many rapes happening in the country⁵⁷.

Thus, it is seen that in spite of strict punishment, cases relating to rapes have not lowered. One of the main reasons is low conviction rate and other blemishes in our criminal system which in a way go in favour of the accused. Coming back to Nirbhaya's case⁵⁸, it is a matter of shame and ignominy that the case that shook the entire nation and the globe itself took eight long years to meet its end. Undoubtedly, there was lot of outrage and people had really become fidgety and ill at ease seeing the immoderate delay in the implementation of death sentence to the most despicable culprits of the 2012 gang rape case. It was seen that number of dates were postponed for execution of death sentence to these culprits. The question here is -was the delay inordinate and unwarranted or was it due to legal slip-ups ubiquitous in our system? The answer is the jail laws that provide for multiple legal succours to each and every convict. Two most pivotal reasons for the inordinate delay are the time period of 14 days to be given to each and every convict after the mercy petition is rejected by the President and secondly bar to the hanging of a person individually when more than one persons are involved in the

⁵⁷ India has uncountable number of cases where women are raped every day. Following are some of the rape cases which cannot be forgotten: 22 year old woman who was a photojournalist gang raped by 5 men which included a juvenile in Shakti Mills Compound in South Mumbai. The sessions court awarded death penalty to three persons who were frequent offenders in Shakti Mills Gang Rape case; A 23 year old women being raped and set on fire by group of people including her two alleged rapists. The woman was going to attend her rape case hearing; Nun accuses Catholic Bishop Franco Mulakkal for repeatedly raping her for a period of two years. Though, charges were denied by him; An 8 year Muslim girl was viciously repeatedly gang raped in a temple and then murdered by throttling and was then knocked with a heavy stone in Jammu and Kashmir; 17 year old girl who was a Dalit was allegedly raped by hostel warden, physical education teacher and principal. Her body was found in the hostel's water tank; 12 year old girl was repeatedly raped by eighteen men for a period of seven months in the vacant apartments after administering sedatives to her; An old nun was gang raped by six intruders who were Bangladeshi Muslims at Convent of Jesus and Mary in West Bengal. Everything was recorded on the CCTV; Bhanwari Devi, was gang raped by alleged five men when she worked with the Women's Development Project; In another incident, in Uttar Pradesh two young girls aged 14 and 16 years were gang raped and then murdered. The suspicion was on the two police officers; Priyadarshini Mattoo, a law student was raped by a fellow law student Santosh Kumar, who was the son of the former senior police officer; A 27 years old girl who was a veterinarian was allegedly raped and killed by four suspected who were later shot dead by police in an encounter; Another very famous case of a 26 years old Aruna Shaunbaug who was a nurse in a Mumbai hospital also caught limelight. She was raped by a ward attendant when it was her night shift. Sohanlal Bharta Walmiki sodomized and strangled her with the dog chain and cut off oxygen supply leaving her in a state of coma. She remained in a vegetative state for more than 40 years and died in 2015; Unnao Rape case is another very popular and high profile case in which number of people including assorted relatives of the victim got killed. In the said case, an MLA Kuldeep Singh Sengar raped a 17 year old girl in the year 2017. In the case, the father of the victim was imprisoned under the Arms Act and was later killed in prison after he was thrashed by Sengar's brother and other people. The uncle of the victim was arrested on the charge of gun firing case which was 18 years old and was imprisoned. Yunus, who was a witness in the said case died all of a sudden and was buried in a very mysterious and suspicious manner without autopsy being done and it was also not conveyed to the police. Later, the uncle and the aunt of the alleged victim were also killed when a truck with black licensed plates rammed the car in which the victim and her relatives were travelling. Due to this, the victim and her lawyer received severe grave injuries. The security which was meant to be there with the victim stated that his failure to be with the victim was due to paucity of space in the car; Dhananjoy Chatterjee raped and murdered 14 year old school going girl in Kolkata. He was sentenced to death in 2004. Available at <https://www.dw.com/en/what-is-behind-indias-rape-problem/a-51739350>; <https://www.reuters.com/article/us-india-rape-factbox/statistics-on-rape-in-india-and-some-well-known-cases-idUSKBN1YA0UV>. Accessed April 25th 2021

⁵⁸ Supra note 13

same crime⁵⁹. In Nirbhaya's case, these two reasons had played a crucial role in getting the execution delayed. In Nirbhaya's case, the lawyer who represented the convicts deliberately delayed the hangings by separately filing review and curative petitions in the Apex Court at different times. Not only this, the mercy petitions that were filed before the President were also filed at separate times. Maximum number of these petitions were sent after the first death warrant was issued by the court on January 7. In Nirbhaya's case, the accused were to be hanged originally on January 22, the date was later shifted to February 1 and then to March 3. However, even now the hanging of all four convicts was dubious because till now all the three accused namely Mukesh Kumar (on January 17), Vinay Sharma (February 1) and Akshay Kumar's (February 5) mercy petitions were rejected and 14 days reprieve was also over but Pawan Gupta's mercy petition was rejected only on March 2nd making him eligible for another 14 days respite period before he goes to gallows, courtesy, Shatrughan Chauhan's case, where the Supreme Court in 2014 delivered a landmark judgment stating that a death row convict can be hanged only after the expiry period of 14 days after his/her mercy petition is rejected by the President. The Tihar Jail manual also endorses the same. Then, the culprits in a common crime case cannot be hanged distinctly. A 1982 judgment of the Supreme Court <https://indiankanoon.org/doc/519936/> stated that the convicts cannot be hanged until the last person who is on the death row has availed all legal redressals.⁶⁰ These were certain bars that stood in the way of execution of death sentence of these four convicts in Nirbhaya's case. The four convicts were finally hanged on March 20th, 2020 after all these formalities were complied with. Though they were hanged after much inordinate delay that caused lot of outrage and anguish in the society because the execution took place eight years after that 23 years old para medical student Jyoti Singh dubbed Nirbhaya was brutally raped and killed, the question here is- Who is to be held accountable? There were 4 convicts in same crime so they could not be hanged individually as stated above and all of them had to avail all legal remedies which was inclusive of 14 days reprieve after their mercy petition was rejected by the president. Individually it was done in all the four cases, thus causing lot of delay in the execution to happen. It shows a blooper can cause delay even in the most horrendous crimes inflicted.

Additionally in cases where death penalty has been awarded, the excessive delay can cause fidgety and ill at ease to people at large. One cannot forget cases like Mumbai terror attack convict Ajmal Kasab's case, Parliament blast convict Afzal Guru's case, and most recently the 2012 Delhi rape case. Undoubtedly the case of *Shatrughan Chauhan v. Union of India*⁶¹ provided certain guiding principles to safeguard the right to life and personal liberty of death-row prisoners, as has been laid down under Article 21 of the Constitution⁶². Providing legal aid, written communiqué of refutation of mercy petition to the convict and their families to be in black and white, bodily and psychological health assessment, minimum 14-day notice prior to execution of the convicts, the chance to meet family members and obligatory *post mortem* report after hanging of the convicts is to be provided to death row convicts to guarantee just, fair, and reasonable procedure laid down under Article 21 of the Constitution, Maneka Gandhi's verdict.⁶³ The inordinate delay of the hanging of the convicts in the landmark case of Nirbhaya, led the Central government to file a petition to challenge the guiding principles provided by Supreme Court in *Shatrughan Chauhan v UOI*⁶⁴ case. The petition filed by the Centre seeks to bound the

⁵⁹<https://www.outlookindia.com/website/story/india-news-nirbhaya-case-this-is-how-convicts-can-delay-hanging-till-april/346570>. Accessed May 5th 2021

⁶⁰ <https://www.indiatoday.in/india/story/one-more-legal-barrier-remains-before-all-four-nirbhaya-rapists-are-hanged-1651650-2020-03-02>. Accessed May 10th 2021

⁶¹ 2014 3 SCC 1

⁶² Article 21, Constitution: No person shall be deprived of his life or personal liberty except according to procedure established by law

⁶³ Supreme Court of India Criminal Law Nirbhaya Nirbhaya case <https://www.barandbench.com/columns/delay-in-execution-of-death-penalty-need-for-a-balance>. Accessed May 10th 2021

⁶⁴ 2014 3 SCC 1

time period for filing curative petition by the offender, limit notice period to offender and his/her family from 14 days to 7 days, and impose a time limit on the procedure to be followed in case of numerous convicts who are facing death sentence⁶⁵. Hope the court comes out with the clear picture by its verdict which will not only be beneficial for the state but also for the convicts in future. Presently, there is no time limit provided to file a curative petition and taking advantage of this slip up, convicts can misuse it, as has been seen recently in Nirbhaya's case. So setting up a time period can ease everything and will not only prove valuable for the state but also for the offender as there will be no bewilderment and the offenders would be able to avail an available succour in a time-bound manner.

Conclusion

Women during her lifetime face innumerable and ceaseless violence. Rape is one such violence which leaves an indelible and ineffaceable impact on her which she has to endure throughout her life. The most reprehensible part is that she has to suffer without any blemish on her part. The question here is- Doesn't woman has the right to live with dignity and sangfroid? Is woman to be treated as a playful object? Are the laws that are enacted sufficient to deter a person from committing this most awful act? Is it because of the male domineering society where woman is just considered as an object? Does she deserve the treatment meted out to her? Should the victims in certain cases be killed after committing of this dreadful act? Should execution in rape cases be inordinately delayed?

India is a country which witnesses gargantuan rape every now and then. These and many more questions keep chasing us and this so specifically after Nirbhaya's case, which had dazed and traumatized the entire nation and the orb. In spite of so many horrendous effects it has on the mind and body of the victim, the trend is mounting and escalating. One of the most pivotal reasons for the meteoric rise in rape cases is the low conviction rate and delay in execution of justice to the victims due to certain blemishes in our system. Nirbhaya's case is a perfect example of excessive delay. Though it was beyond doubt that all the four culprits would get death penalty because of the monstrous and odious act committed by them but the inordinate delay caused lot of fidgety and restlessness amongst people. That lot much of the delay was uncalled for not only for the victim's family but also for the society as a whole. There are some crimes which are really non excusable, rape is one of them because the person in this is not only ravished, now it is seen that they are also killed for no blemish on their part. What was the fault of Nirbhaya? She was not only raped but was tormented to such an extent that led to her death. Was the act of the culprits excusable and pardonable? The answer is 'No'. and on the top of it, the culprits were hanged after eight long years of legal battle. Undoubtedly, law has to take its course and it should take it. The accused in any case also has a right to be defended and garrisoned but unwarranted delay and certain bloopers in the system need to be rectified as rightly said "Justice Delayed is Justice Denied". After Nirbhaya's case, many follies and irrationalities became highlighted which resulted in the delay of execution. The need of the hour is to look profoundly and intensely into the time limit to be provided for filing of curative petition and not leaving it open ended, to curb the notice period to criminal and his/her family which presently is 14 days and execute a time limit of following a procedure in case of numerous offenders who are facing death sentence. It is high time now. Undoubtedly a balanced and composed approach should be there but it should also not be lost sight of that rights of every victims are protected because everyone on this globe has a right to live with self-esteem and sangfroid and moreover a rape victim who has also lost life has suffered all the trauma and anguish without any slip up on her part.

⁶⁵ Ibid