

“¹Speedy Trial for Rape Victims: An Analysis with reference to Indian Legal System”

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Abstract

“Justice delayed is justice denied”

In today’s era, Rape is the crime which outbursts the dignity as well as Persona of Women. Marking the cases of Nirbhaya in Delhi & Veterinary doctor in Hyderabad and many more horrifying rape cases which has left the whole nation in shock. Justice delayed is justice denied, this concept which has only emerged from the criminal law but it’s also there in the ancient Vedic Shashtra’s and puranas. Moreover also according to the teachings of the Bhagavat Gita no one has a right to outrage the women’s modesty or to infringe the right of a women to live with dignity. In this regards only my research paper completely paves the role of knowledge giver about the multidimensional aspects of this topic.

Keywords: Rape, Victim, Fundamental rights, Speedy trial.

INTRODUCTION

According to the words of layman Justice does not only be done , but it also seem to be done. From the time immemorial it is the precedent that whenever either it may be the glimpses of Mahabharata or Ramayana there is always the women dignity outrage then in that particular era it had lead to the great disaster in the life of the accused either it may be the Ravana or Dushashana.

Speedy trial to rape victims is really the need of the century. According to the survey and reports of National crime record bureau ²only one third of the cent percent rapists face the trial, the rest completely get escaped from the legal & criminal procedure.

But now a days in Kalyuga, this practice really had the diminishing effects. Really the establishment of fast track courts is really a necessary need for the establishing the character of Justice Meanwhile, if it need to be focused than women feel the substantial level of

¹ Speedy trial to Rape Victims :An Analysis with reference to the Indian Legal System.
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² <http://ncrb.nic.in/CD-CII2013/Chapters/5-Crime%20against%20Women.pdf>

embarrassment , socially as well as mentally, so the establishment of fast track courts is the matter which really needs to be addressed. And also has an immensely great importance.

ESTABLISHMENT OF FAST TRACK COURTS:

After the gang rape of 23 year old girl Nirbhaya gang rape case it had become the need of the hour to motivate the conceptual points of the settlement of the fast track courts.

The Supreme Court in year 1986 has declared the speedy trial as the fundamental right of the citizens especially in the highlighted cases such as Damini gang rape case ³& Veterinary doctor gang rape case. Really this cases enlightens the spirit of the youngsters as well the people of narrow mentality who diverted their character in that way that they are unable to feel the pain of the women.

According to the survey reports of Ministry of Law & Justice, there are 43.2 lakh cases pending in the High courts and 2.69 crore cases pending in the district courts. Moreover after the Delhi gang rape case , the Delhi high court directed the state government to establish fast track courts. Because in the Criminal Procedure victims feels a great level of mental torture Police questions especially in the absence of female police constables harms the dignity in that way that it pretends very unrealistic situation for the one who is going with that particular situation. So, definitely by establishing the fast track courts will provide a greater way of justiciable way to Rape Victims which really acts as a boon especially in situations of greater number of Rape Crimes which is keep on increasing and also it will help the judiciary to attract the trust of the people again .

TRUST OF CITIZENS ON JUDICIARY:

As we have observed many people do think that judiciary is not working properly they are providing justice but not on time as we can take the example-:

- Nirbhaya rape case it was all started in the year 2012 Nirbhaya was raped by 6 men's but she got justice on 7th January 2020. Judiciary took 10 years to issue justice to the victim and also during the trial one of the accused also committed suicide in Tihar jail as he was the one who has brutally raped the victim and because he committed suicide judiciary could not provide full justice to Nirbhaya and in a way we can say that he got a chance to commit suicide that is just because our judiciary is slow in providing justice they follow a lot of procedures.
- Veterinary doctor's rape case in Hyderabad a police constable shoot the accused as he somewhere knew that judiciary will follow all the procedures and may deliver justice but deliver late justice, and in a way we can say that police officer has interfered in the work of judiciary which is very wrong but he did so just because he has no trust over the judiciary, although media told us that police shot the accused just because he

³ Yadav Mukesh, 'Crime against Women: Recent Judicial Trends', <http://medind.nic.in/jal/t06/i3/jalt06i3pviii.pdf>

was trying to escape from police, but we know the truth as if he only has to stop the accused he could have just shot him on his leg so he won't run away. There are a number of cases we have seen in which the common citizens murder the accused of rape like in South Africa Nokubonga Qampi she was the mother of the rape victim she murdered the rapists of her daughter, and many movies like in the movie Mom victim's mother herself murdered all the accused after she got injustice from the court. This is a great example in which we could see that people do not trust judiciary anymore just because the process of trial is very slow that is why in India speedy trial is necessary to be implemented.

RIGHT TO SPEEDY TRIAL FOR RAPE VICTIM:

Right to Speedy Justice is an essence of Criminal Justice System of which Right to Speedy trial is a specie⁴. The paramount purpose of speedy trial is to safeguard the innocents from undue punishments but prolonged pendency has created an uncountable barrier in that path. Huge number of cases is pending for years together, which create mental and economic pressure on litigants. Moreover, Fundamental rights enshrined under Constitution are not mere words but they are meant to enforce effectively and proficiently. In various landmark judgments, Supreme Court of India has asserted that if there is an excess adjournment or delay, Court has a right to quash the case or the proceedings to meet ends of justice. In the case *Katar Singh v. State of Punjab* it was declared that Right to Speedy Trial is an essential part of fundamental right to life and liberty.

In the case *Abdul Rahman Antulay v. R.S. Nayak*, the bench declared⁵ certain aspects and guidelines regarding the Speedy Trial and quashing of cases should depend upon nature of the case. Therefore Right to speedy trial is a basic right of the victim and it not only covered in investigation, inquiry, trial but also in appeal, revision and retrial process⁶.

However, trial of rape cases should be dealt with extra sensitivity and foremost care should be taken to provide quick justice to victim. This is because of the fact that, the victim has already departed with grave physical and mental trauma and if she undergoes to prolonged trial processes, that the purpose of Law shall be.

IN INDIA;

Rape is a crime which is getting increased day by day every single day we hear about the rape cases even the culprits are even minor like we have seen that a new born baby was raped, 6 year old child is raped, a bus driver raped a minor, from where these people have the audacity to rape small girls why the minors of today's generation can even think about raping.

Are they not scared of the punishments?

⁴ Ratanlal and Dhirajlal, *The India Penal Code*. Lexis Nexis Butterworths Wadwa, India; Thirtieth edition reprint 2009, p.678-679

⁵ *Harjinder Kaur vs State of Punjab and others*, CrI.Misc.No M- 31938 of 2011

⁶ *Bodhisattwa Gautam vs Shubra Chakraborty* (AIR 1996 Supreme Court 922)

Yes, they are not as laws in India against the offence of rape is not enough laws punishments should get more severe so that they can't even think of raping a women as rape destroys the girls physical as well as her mental health she is traumatized .

JUSTICE TO RAPE VICTIM IS STILL FAR:

The country witnessed unprecedented protests in December 2012 when a 23-year-old physiotherapy intern was brutally gang-raped and killed on a moving bus in South Delhi. The government was forced to enact new laws and announce systemic changes to ensure perpetrators get swifter and more stringent punishment, thereby creating a strong deterrence against such crimes.

Seven years on, little has changed. Thousands of cases await trial - and the numbers are spiraling by the day - because of gaping loopholes in India's criminal justice system like massive shortages of forensic labs, fast-track courts and investigators, despite tall promises made by the government, a Mail Today deep-dive has found. The revelation comes at a time there's a nationwide outrage after four men gang-raped and burnt alive a 26-year-old veterinarian in Hyderabad.

SHOCKING NUMBERS

According to the latest National Crime Records Bureau (NCRB) report, there were 33,658 reported cases of rape and sexual assault in India in 2017. About half of victims were from the 18-30 age group. Also, in 2017, the police in all states and UTs were investigating a total of 46,984 cases of rape. This indicates that several thousand cases were pending investigation from the previous years. In 2017, there were 331 cases across the country of rape and gang rape victims also being murdered.

The NCRB data also shows that 93.1% of all rape and sexual assault victims were attacked by known people, including family members, neighbors, friends, employers and romantic partners. In 2017, "strangers" were accused in 2,289 cases. However, the same NCRB report shows that only 43,197 persons were arrested for rape/sexual assault in 2017, and only 38,534 charge-sheeted and made to face trial.⁷

CASES IN INDIA HYERABAD RAPE VICTIM MAY NOT GET SPEEDY TRIAL NOR IN CASE OF NIRBHAYA .

⁷ Siddhant Saxena and Vatsal Varma ,Trail ,time and judgement ;the outlook of Indian judicial system'International journal of research and analysis , volume 1 issue3,2014 ,available at http://www.ijra.in/uploads/41649.9756835417fullpaper_siddhant%20&%20vatsal%20varma.pdf 15(1994) 3 SCC569

16 AIR 1988 SC 1531

One hopes the similarities end here for the sake of speedy justice to Hyderabad gang rape victim lest it becomes yet another case of delayed justice, if not denied. Let's have first a look at how Nirbhaya gang rape case proceeded.

Nirbhaya boarded the bus in which she was gang raped and brutalized on the fateful night on December 16, 2012. Six persons were involved in the gang rape and also inflicted fatal injuries to the victim's internal organs. They were arrested from different locations over next six days.

In January, then Chief Justice of India inaugurated a fast-track court for speedy trial. The police filed charge sheet in Nirbhaya gangrape case on January 3, 2013 18 days after the crime was committed. The fast-track court began hearing against five accused from January 17. One accused was declared juvenile by six months.

The first conviction in Nirbhaya gang rape case came on August 31, 2013 eight and a half months after she was raped. The juvenile was held guilty and sentenced to a reformation Centre for three years.

The fast-track court delivered its verdict in nine months, declaring four accused guilty and awarding death penalty to all. The other adult accused had committed suicide in the Tihar Jail of Delhi during trial.

Six months later, the Delhi High Court upheld the trial court ruling and confirmed death sentence to all four convicts. This was on March 3, 2014. The matter reached the Supreme Court, which began hearing this case on a fast-track mode in April 2016 more than three years and three months after the crime was committed.

In May 2017, the Supreme Court upheld death sentences to the four convicts in Nirbhaya gang rape case. Three of the four convicts filed review petitions against the Supreme Court judgment.

In July 2018, the Supreme Court rejected the review petitions. More than five and a half years had elapsed since the crime was committed that shook India. Then came a mercy petition to the President of India from one of the convicts.

On December 1, the Delhi government recommended to the President that the mercy petition of the Nirbhaya case convict be rejected. Almost seven years have passed since the crime was committed.

Irony is that the decision to reject mercy petition in one of the benchmark cases of gang rape and murder came in the shadow of anger and protests over gang rape and murder of the Hyderabad doctor.

Now that the mercy petition is set to be rejected, the mother of the 2012 gang rape victim has expressed frustration over "endless wait for justice". The family of the Hyderabad victim would expect a speedier path to justice.

⁸Speedy justice is not merely an aspect of the right to life with dignity, but is essential for efficacy of the law and its desired impact, as well as for prevention of its violation, the Justice JS Verma committee appointed in the wake of outrage over Nirbhaya gang rape case had concluded.

Yet Nirbhaya case has not reached its closure in seven years. Seen against this background, the speed of justice delivery in Nirbhaya case offers little hope for a speedier justice to the Hyderabad victim.

PARLIAMENT RECOMMENDED FOR SPEEDY TRIAL:

Parliament condemned the rape and murder of a veterinary surgeon in Hyderabad and urged the Centre to ensure speedy justice in the cases of atrocities against women. The Congress said mere sloganeering will not help and asked the Centre to come up with emergency measures to ensure safety of women.

Chairman Venkaiah Naidu, who allowed the discussion, said what happened in Hyderabad is a total disgrace to all principles of humanity. “It is terrible that we are getting to hear more and more of brutal incidents of outraging the modesty of a woman,” the Vice-President said. Unanimous support Leader of the Opposition Ghulam Nabi Azad, said the problem cannot be solved by one law or one Act.

He said the entire country will have to stand together to eliminate atrocities against women. He said the problem will have to be taken out and destroyed with its roots.

An emotionally charged Samajwadi Party MP and actor Jaya Bachchan said the rapists should be brought out in public and lynched. “These people should be shamed in front of the country,” she said. DMK MP P Wilson said courts should be suggested to surgically and chemically castrate convicted rapists. He said many countries have this punishment and it will reduce the sexual performance and sexual re-offending.

“The cost of such procedure should be recovered from the accused by selling his assets,” he said MPs such as Mohd Ali Khan and Sanjay Singh demanded speedy trial of such cases. In Lok Sabha too, the matter was taken up. Defence Minister Rajnath Singh condemned the incident. “We are ready for discussions in the House so that stringent provisions in laws could be explored to give punishment to those involved in such ghastly incidents,” he said. Minister of State for Home Affairs G Kishan Reddy said that the Centre is ready to amend the Indian Penal Code and CRPC to ensure speedy justice in such cases.

LOW CONVICTION RATE:

Later, talking to reporters, Congress spokesperson and MP Ameer Yajnik said the conviction rate in such cases is just eight per cent. She said the UPA Government amended the CRPC,

⁸ Sweta Leena Panda ,Rape Laws in India , December 21 ,2012 available at <http://swetaleenap.blogspot.in/2012/12/rape-laws-in-india-rape-is-stigma-which>.

but the present government has not done anything. “There’s only talk and nothing is done on the ground. Nirbhaya fund remains unused,” she said. “We talk about ‘*beti padhao beti bachao*’ but when they educate and step out and then things like these happens and everyone is only a mute spectator,’.

DEATH PENALTY IN RAPE – RARE OF RAREST CASE

In August 2019, India amended the Protection of Children from Sexual Offences (POCSO) Act, 2012, to allow death penalty for the rape of children younger than 12 years.

In what was termed as “extrajudicial killings”, four men accused of raping a 27-year-old veterinary doctor in Hyderabad were shot dead by the police in December 2019 “when they tried to flee”. The Andhra Pradesh legislative assembly subsequently passed a bill to allow death sentence in rape cases.

There is no evidence to prove that the death penalty is a stronger deterrent than life imprisonment, according to the Law Commission of India’s 2015 report on death penalty.

Similar demands for harsher punishment for sexual violence were raised after the brutal gang rape of Jyoti Singh in Delhi in 2012 which led to a number of reforms and legislative changes including the Criminal Law (Amendment Act), 2013 that brought offences such as stalking, voyeurism, acid attacks and sexual harassment under its purview.

However, while the reforms improved reporting of rape, there has been little or no impact on arrests and convictions rates, India Spend reported in August 2019 based on a February 2019 study. The conviction rate for rape had been on a steady decline since 2007 and reached a historic low of 18.9% in 2016 from 27% in 2006, the study observed.

JUVENILE DELINQUENCY:

Juvenile delinquency is also known as juvenile offending it is participation of a minor in a legal behavior by the minors, it is a type of criminal pursuit done by the person between the age group of 10 to 17 years. juvenile are basically are the individuals who are less than the age of majority prescribed in the statutory laws. These juvenile laws are specifically made for the minor offenders, These offences are tried by juvenile courts these offenders are not prone criminals they are basically minors who are involved in criminal activities like rape, sexual assault, theft, smoking, property crimes, murder and many more violent crimes. Most legal system prescribes the procedures to deal with juvenile such as juvenile detention centers the procedure to try the minors in a juvenile court is different from the other offenders, but the justice system can be changed if the crime committed by the minor is of a very heinous nature.

CAUSE:-

There are many causes of juvenile delinquency

- Poverty
- Lack of parental supervision
- Parental pressure
- Economically weak
- Unfavorable home
- Lack of education
- Lack of sex education
- Sex indulgence
- Socialization
- Influence of popular media
- Substance abuse
- Forced/ child labor
- Family conflicts
- Lack of attention by parents.
- Money.
- Movies
- Social pressure towards the performance as now a days everyone is very much concerned about the position or rank no one is bothered about the character of the child.
- excess to Technology
- Too much of pamper by parents-
- Nuclear family- are a big problem as parents are unable to give good upbringing we can else see that before 30 years there were no juvenile crimes used to happen because children's used to live in joint families.so, yes we can say nuclear family is responsible
- Mental problem

REMEDIES FOR PREVENTION OF JUVINILE DELINQUENCY

- Free education
- Correctional homes
- Look family background
- Experts suggestions- suggestions should be taken by the experts
- Seminars and conferences – must organize conferences and seminars

PUNISHMENTS-

1. Simple offences-less than 3 years
2. Serious offence- 3-7 years of punishment
3. Heinous criminal offence- more than 7 years punishment according to the law, and if anybody above 16 years of age will be treated as an adult

WHAT IS THE LINK BETWEEN NIRBHAYA CASE AND JUVENILE CRIME WITH REFERENCE TO CRIMINAL LAW:

As we know that the fifth accused in the case was a minor and he has brutally raped the victim more brutally than the other accused, it was a kind of forced migration there was no proper parental care as he was put in the company of elders who all were adults who actually used to watch a lot of pornography and were also prone to sexual ideas and that is why they simply raped the girl. But they do not get punishment according to the crime which they have committed as they are tried by juvenile courts and court punishes them according to the laws made for juvenile courts but as we have seen many cases which are very heinous in nature like in Nirbhaya rape case there was one minor boy also who was the fifth accused and he brutally raped her like other accuse only, then why he got exempted just because he was a minor this is somewhere injustice to Nirbhaya. These minor offenders are using these juvenile laws and taking its advantages in a very different way but they should get same punishment court must see the minor accused state of mind because yes as he has committed such a heinous crime then of course he must be aware of the consequences and he knew that as he was under the age of 18 years or he is minor so he somewhere took the advantage of this or we can also say that maybe indirectly but these minor offenders are being benefited. The courts must take in consideration the nature of the offence committed by the minor, his amount of involvement in the crime.

WHAT MEASURES CAN BE TAKEN TO REDUCE JUVENILE DELINQUENCY:

1. Engaging children's in physical activities and Must ensure that there is proper implementation of rules related to school infrastructure children's must get engaged in the sports it will improve their sportsmanship, they will always be engaged in sports, the initiation started by the government which is "khelo India". Is a good start by government to reduce juvenile delinquency.
2. Sensitizing the teachers towards the need of children.
3. Inter school or inter college There should be a manual provided by the government for the schools manuals should say that the child must focus on all the overall activities should be promoted in the schools.
4. Value based stories will help a lot like *Panchatantra* or *amarchitrakatha*.
5. Less pressure on children I personally believe that educated parents pressurize more their children's as compared to uneducated parents as there is a thin line between education and literacy.
6. Curative measures should be taken.
7. Education should be more in the form of learning.
8. A lot of vocational training should be introduced to students.
9. Parents must use software's which does not allows children's to browse like prone sites parents must use these software but even now parents doesn't use this they find it useless or it is a wastage of money, we can say that there are lack of awareness but there is also lack of usage.

10. Separation of children's can lead to crime as children's are not under the parent
11. Strengthening Enforcement of new child labour laws
12. Stop migration.

HIGHLIGHTS ON POCSO ACT (PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT 2012)

POCSO (Protection of Children from Sexual Offences Act 2012) is basically the act to protect children against the sexual offences , sexual abuse and pornography which were at the mark of destroying the life of the children's at the great level. Basically it is the child friendly system for trial underneath so the perpetrators could be punished. The Act defines a child as any person below the eighteen years of age .It also make provisions for avoiding the re-victimization of the child at the hands of the Judicial System .Mainly POCSO Act received the President's Assent on June 19,2012. It was notified in Gazette of India June 20 in the Same Year. Finally the act main interest is to protect the children's from sexual abuse, sexual pornography and sexual assault. Moreover the act main concern is to put mandatory pressure on civilians that if he she is being informed about the crime ,it really need to be reported at the crime cells so the matter should pass at the hands of the advanced forum. At the Last the Act provides advance features such as Speedy Trial and In Camera Proceedings which really are created to increase the Confidence of the Victim.

VISHAKHA GUIDELINES: A FLASH ON THE TOPIC⁹:

Vishakha Guidelines in today's scenario is the name by which every corporate or say non corporate organization is familiar with specially known for dealing with sexual harassment cases. This guidelines especially came into effect by the case of Vishakha v State of Rajasthan ¹⁰.It need to be established in every working organization even in colleges ,universities where women work as a part of organization for their help and redressal even if any unfortunately they become the victim of sexual assault in those particular organizations. Basically , the litigation resulted from a brutal gang rape of a publicly employed social worker in a village in Rajasthan during the course of her employment. The Petitioner mainly who were bringing the action were various social activist & non- governmental organization .Under Article 32 of the Indian Constitution , an action was filed in order to establish the enforcement of fundamental rights relating to the women in the workplace. In Particular it sought to establish the enforcement of Articles 14,15,19(1)(g) and 21 of the Constitution of India and Articles 11 and 24 of the Convention on the Elimination of All forms of Discrimination against Women.

CRIME AGAINST WOMEN: RECENT JUDICIAL TRENDS

According to the reports of National Crime Records Bureau(NCRB) recent report "CRIME CLOCK- 2005" , basically it meant for . as it has tracked criminal activities in past few years

⁹ <http://www.elaw.org/resources/text.asp?id=1831>

¹⁰ (1997) 6 SCC 241,AIR 1997 SC 3011.

, the country reported one crime against women in every three minutes, one molestation in every fifteen minutes, one rape in every twenty nine minutes and one dowry death in every seventy seven minutes and sexual harassment in every fifty three minutes. Mainly Among the Crimes reported rape, molestation, dowry deaths , sexual exploitation reported very frequently.

Out of all the Crimes reported Rape is the Most heinous crime ever happened. Rape can occur anywhere even in the family, where it can take the form of the marital rape or incest. It occurs in the Community, where a Woman can fall prey to an abuser. Indian Judiciary is also now acting as per the demand of the time .Serving Justice in reasonable time, an Alwar Fast Track Court o April 12 , 2006 sentenced 23 years old managements student ,Biti Hotra Mohanty Son of a DGP level IPS officer B.B Mohanty to Seven years rigorous imprisonment for the offence of a rape of German Scholar. Mainly, the perceived immoral character of a rape victim has led to acquittal of many rapists. More than two decade ; ago a public campaign over Supreme Court acquitting Constables Tukaram and Ganpat in 1979 of Custodial rape charges after disbelieving the testimony of the Victim.Moreover,SEC-114A basically introduced in the Indian Evidence Act by the Amendment says the court shall presume lack of consent in cases of custodial rapes where mainly the sexual intercourse is proved & where the women consent is not there. Rape by Police Officers ,Public servants, jail, hospital, remand home staff and gang rape are included in this section. Finally , it becomes the need of the hour, settlement of the fast track courts for the speedy trial for victims a well as to maintain the dignity of Justice in the Legal System.

CONCLUSION

Rape is considered as most heinous crime against woman under Indian Criminal Law. Rape not only defiles the physical health of the victim but also ruin her inner soul. No ointment would be able to provide a relief to victim, as there is no medicine for mental distress. On the other hand, a quick and fair justice to victim of rape can do the little needful. However, it is found that cases of prolonged trial are very common in India and it works as catalyst to increase mental trauma of victim. Nevertheless, Right to Speedy Trial is a fundamental right of a victim which is enshrined under Article - 21 of Indian Constitution. Also there are various legislations in this regard which asserts speedy and fair justice to victim of rape. But, problem lies in the implementation of these Law and lots of efforts should be made to make trial process more effective so that justice to victim should not be delayed. Mainly, the research paper sole moto was to touch the each and every dynamics of the legal approach of the topic and to do its analysis with respect to the Indian Legal System.

Finally , it becomes the need of the hour, settlement of the fast track courts for the speedy trial for victims as well as to maintain the dignity of Justice in the Legal System.