

UNDERSTANDING THE RAPIST, RAPE VICTIMS AND THE LAW OF RAPE

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I. INTRODUCTION

In the year 1990, the incidents of rapes against women were 9,518 and the figure of rape victims increased substantially to 12,315,¹ in India. The trend is alarming as to how and in what direction our society is drifting as regards the inhuman attitudes of men towards women. The increase of the incidents of rape against women are reported to be similar in all age groups of victims of rape.² Much more alarming is the fact that the incidents of Paedophilia *i.e.*, incidents of child rape are increasing at phenomenal rate. It is reported that the incidents of child rape averaged around two cases per day. In the year 1993, 634 child rapes were reported and it rose to 734 in the year 1994 showing the increase of 15.8% in a year. Caution may be added that the above figures are only the reported cases of rapes in all age groups.³ It is believed that only a few cases are reported about rape victims particularly in the cases of child abuse and child rape incidents.

Rape by a man of a woman or a child is the most inhuman act of aggression and violence against women and the law of nature which expects men to protect and respect the integrity, dignity and womanhood of women by men. Morally and legally, it is an intrusion to the privacy of a woman and is a violation of her right to be respected, protected, loved and of her freedom of life. Being a human being who is supposed to have intellect and reason it is expected of men not to disrespect women. The very act of rape by man of woman is outrageous, inhuman against the conscience of men and women's role in society and disturbs the soul and conscience of women particularly.

II. WHO ARE RAPISTS?

All men do not have criminal tendencies to rape a women. It is true as a natural phenomenon that men are always attracted towards women and all men do not commit rape or intend to rape. The law of nature is that it is the male species which always like to cares and please the female species. The point which this writer wants to convey is that rapists are certainly of different mental make up than the normal male species or men. And rapists are absolutely abnormal men though one may find rapists from all walks of life and are to be

found among all age groups, economic strata, races, religions, nations and societies. In India when the institution of joint families was prevalent and the society was a village society the incidents of rape were rare. However, with industrialization, and growth of cities particularly the metropolitan cities the menace of rape against women has escalated tremendously. It appears from the statistics given above in this paper that the incidents of rape against women is assuming alarming proportions alongwith the growth of free market economy in India and the incidents of rape victims may be shocking in future.

The rapists are basically pathological people who grow in the broken homes or disturbed families, excessive drinkers, drug addicts, moneyed class men who make riches through illegal means and the like. Rapists do not commit only the crime of rape against women but they commit multiple crimes. If the rapist is sadists person then it is not only rape but he is also likely to commit murder, grievous hurt, dacoity, robbery, smuggling, illicit distillation of liquor, etc. If the rapist is a child rapist he is also likely to commit crimes of cheating, embezzlement, forgery, theft etc. In other words, the rapist is a sign and signal of alarm in society, because the rapists are likely to commit crimes as listed above. And therefore, the society has to be very concerned and careful about rapists.

At the same time we should not be oblivious that in some cases even woman may exploit a man by raising the false pretence of rape of herself or her child. The illustrative case of *Satish Mehra v. Delhi Administration and another*⁴ (Criminal Appeal No. 1365 of 1995 dated 31-7-96) is a very serious pointer to prove the point. It is submitted that many feminist writers both men and women have negligently commented about the case without reading in depth and finding *ratio decidendi* of the case and have carelessly criticised the Supreme Court judgement.

In *Satish Mehra v. Delhi Administration*⁵, the Supreme Court was supposed to decide whether the Sessions Judge should frame charge of sections 354 and 376 read with section 511 of IPC, against the appellant. In this case, Satish Mehra and his wife Anita were married and living in New York. But the married life was admitted by the wife "extremely painful and unhappy from the very inception". They had a daughter Nitika and the wife Anita was suffering from some kind of psychiatric condition. The wife had siphoned of huge amounts in the bank accounts in India by forging the signatures of her husband with the help of her father. The appellant husband was prepared to forego the bank accounts and also obtain divorce but was not prepared to part with the custody of children including Nitika on the ground that it would not be in the interest of the children that they should live with Anita. The wife because of strained relationship with the appellant husband and in vengeance

filed a complaint against the husband at the police station in USA alleging that her husband has sexually abused the daughter Nikita then aged four year. The police in the United States after conducting detailed investigation concluded that the allegations of incestuous abuse are untrue. The family court in New York had ordered that custody of the children be given to the appellant husband. Meanwhile, the wife has returned to India with her children. The New York court had also issued the warrant against Anita, the wife, for the custody of children to be given to the husband.

The case against the husband in India was again based on the complaint of the wife Anita who complained to the police under sections 498-A and 354 IPC and the police officer investigating the crime moved the Sessions Court for framing the charges after adding yet another offence of rape under section 376 of IPC. The Sessions Judge dropped the charge of section 498-A IPC but did frame the charge under sections 354 and 376 read with section 511 IPC. On the above facts, finding the wife has already harassed the husband falsely by filing the complaint against her husband in the USA, the Hon'ble learned Justice K.T. Thomas speaking for himself and Justice M.M. Punchi decided that if at the stage of framing the charges the Judge does not find sufficient ground to proceed against the accused then he shall discharge the accused under section 227 of the Criminal Procedure Code, 1973 which reads as follows :

Discharge— If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

Under the above circumstances, the Supreme Court very wisely decided that under the special situation of the case no useful purpose would be served if the trial is allowed to be continued when in fact it would in all probability, because of the vengeful nature of the wife, the Sessions judge would not be able to convict the accused husband. In such cases, the question is, should the husband be just harassed by keeping the protracted trial on false accusation against him? This writer is of the view that in the quest for figures of women, which he advocates for women false charges by women in general and wives in particular should not be encouraged by the women activists. Such activism would lead to disharmony in the society in which men, women and children are equally concerned.

III. ABOUT THE RAPE VICTIMS

The effect and consequences of rapes are so deplorable that it shatters the confidence and soul not only of the women victims but also of the society as

a whole. In this respect, the Supreme Court in *Bodhisattwas Gautam v. Lubra Chakraborty*⁶ very cogently observed that rape is not only a crime against women, it is a crime against the entire society. Moreover, the court opined that it is a crime against basic human rights and is also violative of the victim's most cherished fundamental right, namely the right of life contained in Article 21.

In rape cases particularly in India, if looked at from proper perspective *i.e.*, from the women victims point of view and psychological, biological, moral and societal structure, one would observe that a woman victim of rape may not be able to stand the social stigma and have enough courage even to report the matter to the police. Moreover, it is also true that in the male dominated society of India, inspite of the heinous crime against women, women victims are looked with a sense of hatred and stigma against the women instead of hatred against the rapists.

In *State v. Ramkaran and others* (a case decided by the District and Sessions Judge at Jaipur in the year 1995) where a lady Bhawani Devi who was employed in a Rajasthan's Women's Development Programme called 'Sathin' at grass root level was gang raped by five persons when she tried to stop a child marriage as part of her active duty. First of all the local police refused to register a case against the rapists. The hospital asked that she should get an order from the Magistrate and even the Deputy Superintendent of Police still refused to register her complaint. It is only after she made frantic efforts that a complaint could be registered. And even the Sessions Judge at Jaipur acquitted all five accused giving the reasons that rape is usually committed by teenagers and since the accused are middle-aged and therefore respectable, they could not have committed the crime. An upper caste man could not have defiled himself by raping a lower caste woman. If such decisions keep on coming from the courts then it really strengthens the suspicion of women that the Indian society has a deep rooted gender bias and even the prejudices and biases relating to castes are still deep rooted in India.

IV. CRITIQUE ON THE LAW OF RAPE IN INDIA

The object of this paper is not to explain the whole law of rape but to merely point out the scheme, utility and weakness under the present Indian law. Rape is defined under section 375 and punishable with life imprisonment or with imprisonment of either description for a term which extend to ten years under section 376 of the IPC.

The debate that the definition of rape should be changed in order to include other forms of intrusions on the body of a woman or insertion of other objects like fingers, or bottle or stick or any other insertable object in the vagina of a woman instead of penal penetration in the course of carnal intercourse. This

writer is of the view that there is section 354 IPC which is meant to punish an assault or criminal force to woman with intent to outrage her modesty which is punishable with imprisonment for a term which may extend to two years. Therefore, if an assault is made or criminal force is used with the intent to outrage the modesty of a woman, culprit can be punished under the said provision of the IPC. It is true that there is no other provision apart from section 354 IPC which may punish the offender more severely for inserting fingers, bottle, stick or any other object under the law. It is suggested that the definition of rape should not be changed because it is an offence against a woman only when penal penetration is done by a rapist and traditionally that is the correct language used for the purpose of rape. However, a new provision under the law is needed which should punish the offender for inserting finger, bottle or any other object in the vagina with the object of satisfying lust. In *Smt. Sudesh Jakhu v. K.C.J. and others*⁷, Jaspal Singh, J., of the Delhi High Court, has rightly held that intrusions of other objects in the vagina cannot be brought to convict a rapist under section 376 of the IPC. The learned Judge in the above said case very cogently remarked :

The concept of crime undoubtedly keeps on changing with the change in political, economic and social set-up of the country. The Constitution therefore, confers powers both on the Central and State legislatures to make laws in this regard. Such right includes power to define a crime and provide for its punishment. Let the legislature intervene and go into the soul of the matter. Rape is a serious matter though, unfortunately, it is not attracting serious discussions. Not even in Law Schools. The seriousness of the offence with respect to oral intercourse or vaginal penetration otherwise than with penis is realised though involves an act or sadism which is likely to cause the victim for greater pain and physical damage than rape itself.

Therefore, it is suggested that a stringent provision under the IPC is needed for punishing the offenders for penetrating other objects in the vagina and for the oral intercourse. Further, custodial rapes by a public servant, intercourse by Superintendent of Jail and remand homes *etc*; intercourse by any member of the management or staff of hospital are punishable under sections 376 to 376 D IPC. And section 376-A IPC punishes a separated husband for rape with his wife during the period of separation for a term of two years.

The writer is of the view that definition of rape is perfect and should not be altered. The only thing which is desirable that the punishment may be made stringent in the case of separated wife's rape and for the custodial rapes as these kinds of rapes involve breach of trust of the person in custody.

V. SOME OTHER SUGGESTIONS

(a) So far under the law there is no clear provision for providing compensation to the rape victims except that a fine can also be imposed on the rapists. In this regard, it is suggested there should be a provision for compensating the victims of the rape by imposing heavy fines at least on the rich rapists. The compensation should be classified according to the category of rape victims and this writer suggests that following categories of rape victims :

- (i) Child below seven years.
- (ii) Above 7 years to 14 years.
- (iii) Above 14 years to 21 years.
- (iv) Above 21 years to 35 years in case of married women.
- (v) Above 21 years to 35 years in the case of unmarried women.
- (vi) Above 35 years.

(b) The above classification can also be useful for sentencing a rapist because the consequences and impact on the psychology of the above categories of rape victims is distinct from one another.

(c) For the recidivist rapist, it is suggested that a separate provision under the IPC should be introduced which should provide for the punishment of castration as the only punishment under the law.

If the above suggestions are seriously considered by the Law Commission of India while suggesting the reforms in the law of rape and ultimately adopted by the Parliament then these would go a long way in respecting, protecting and healing the wounds of the rape victims.

Above all, it is suggested that the court dealing with rape offences should be sensitive towards the conditions of the rape victims and award punishments to rapists with great seriousness towards the women conditions in the Indian society.

NOTES & REFERENCES

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1. KALI'S YUG, Vol 1, 1996 at 22.
2. *Id.* at 23.
3. *Id.* at 24.
4. Criminal Appeal No. 1385 of 1995 dated 31-7-96 (SC).
5. *Ibid.*
6. 1996 1SCC 490.
7. Cri R. 101/96 decided on May 23, 1996.