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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **INFLUENCE OF JUDICIARY ON RAPE CASES** **IN INDIA**

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## **Abstract:**

Sexual violence continues to be one of India's most compelling human rights concerns, where enforcement and adjudication failures in the system work against justice for rape survivors. This article critically analyzes the performance of the Indian judiciary in responding to rape cases, both as a defender of rights and as a repeated failure characterized by leniency, inconsistency in sentences, and an inability to deter. Analyzing landmark judgments and patterns in judicial thought, the essay probes how discretionary authority, absence of uniform sentencing policy, and socio-cultural prejudices impact judgments in rape trials. It contends that judicial behavior, when severed from a rights-based and victim-centered approach, undermines the credibility of legal reform and does not deliver effective redress to survivors. The research emphasizes the pressing necessity for judicial accountability, institutional change, and culturally sensitive legal practices that place the experiences and dignity of survivors at the core.

## **Introduction:**

Sexual violence, particularly rape, remains one of the most pervasive and brutal violations of human rights globally. In India, the issue is especially concerning due to the alarming frequency of reported cases and the systemic inefficiencies in addressing them. Despite the existence of a robust legal framework, including provisions under the Indian Penal Code (IPC) and various amendments following landmark cases like the Nirbhaya incident of 2012, rape survivors continue to face significant hurdles in their quest for justice. These challenges are compounded by the apathy of state machinery, including law enforcement agencies, medical institutions, and administrative bodies tasked with implementing victim-centred policies.

Despite having a comprehensive legal framework, including the Criminal Law (Amendment)

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Act of 2013, introduced after the horrific 2012 Nirbhaya gang rape case, the enforcement of these laws remains riddled with challenges. Apathy, corruption, and inefficiency within the state machinery, coupled with judicial delays, continue to undermine the justice delivery system, leaving many survivors without adequate redress. The judiciary, as the guardian of constitutional rights, plays a pivotal role in shaping the response to rape cases. However, the judicial system in India is often criticized for delays, inconsistent judgments, and failure to hold state actors accountable for negligence or misconduct. This lack of accountability has led to a persistent gap between the legal provisions on paper and their effective implementation, further exacerbating the plight of rape survivors.

Added to this would come additional problems fueled by certain judgments or statements passed by the judiciary, which shows leniency of the courts while convicting the accused in rape cases. The judiciary chides numerous reasons including, the minority of age of the offender to defend its magnanimity, however this only leads to more confusion.

### **Importance of the Judiciary:**

In the case of *State of M.P. v. Salem Chamaru*,<sup>3</sup>, the Supreme Court of India held that, "If the appropriate punishment is not awarded for a crime that has been committed against both the victim and the society to which the criminal and victim belong, the court will be derelict in its duty." The punishment awarded for a crime should not be arbitrary; instead, it should be in proportion to the brutality of the commission of the crime. The gravity of the offence calls for public outrage, and it should serve to fulfil the public cry for justice against the perpetrator. In spite of the fact that the above order relinquishes courts' responsibility to protect society by punishing individuals who commit heinous crimes such as rape severely, the truth is otherwise and disturbing.

The highest court itself is unfortunately not meeting its own hyperbole, as is made richly apparent in the following discussion. There is, however, no longer any doubt that Supreme Court decisions have an impact upon much of the law that governs the lives of victims and the workings of the state. In India, criminal courts play a pivotal role in developing and enacting punitive policies. The punishment provisions of the IPC grant the judge sentencing a high degree of discretion and never really try to alter the details of sentencing procedures. The

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<sup>3</sup> (2005) 5 SCC 194.



judiciary plays an important role in setting sentencing policy, and the appellate courts—the Supreme Court and the High Courts—are responsible for making authoritative rulings regarding principles and policy within the judicial hierarchy. They also have the power to hear appeals of all sentences passed by lower courts.

"In cases under sub-sections (1) and (2) of section 376 of the IPC, courts may, in appropriate cases, impose a sentence of imprisonment for less than the minimum prescribed for special and sufficient reasons. The same penal policy, guidelines are to be applied by the courts below in the exercise of their discretion." There cannot be any likelihood of passing a sentence less than the minimum provided by law unless the court deals with these factors in its decision.

Courts have to decide the right amount of punishment in every case since due to the legislature's restricted freedom under reduced sentencing, it is not possible for them. The pattern of sentencing presents a mixed image since judges have been authorized by the legislature to deliver lenient sentences. The courts' mindset hasn't changed much at all, even if the victim of rape is a child. But the most abhorrent form of victimisation for women and children is rape. It has been said that the crime is a deathless shame for women. As per the line taken by our superior judiciary, a conviction in rape cases can be based on disability or unless it is improbable<sup>4</sup>. Offenders still manage to go scot-free in many rape cases and commit the offence once more.

Judicial activism, in the case of the various forms of rape, is illustrated in the judgments that courts from time to time deliver. A look at a few cases in the last 30 years makes it obvious that there is no uniform policy that is invariably accepted by all other lower courts, although the appellate courts sometimes lay down general policy guidelines. It should be kept in mind how the court would respond while sentencing the accused in rape cases based on this and based on the perspective of the victims. It may be possible to ascertain some of the working guidelines for sentencing in rape cases by examining some rape judgments at the Indian appellate level over the past few years.

When sentencing rape suspects, the Indian judiciary initially used its discretionary powers liberally. During that time, the 10-year, 20-year, or even life imprisonment sentence was hardly

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<sup>4</sup> Adam Tuky v. State of Orissa, 1993 (2) crimes 33 (Orissa)

ever used in most cases. With consideration of the age of the accused, educational background, repentance, absence of danger to society, probability of reformation, the act having been committed in heat of passion or lust without aiming to do so, etc., as factors to reduce the sentence, there was a tendency to punish nearly less than seven or five years of imprisonment. This trend continued up to the passing of the Criminal Laws (Amendment) Act of 1983. After this amendment, judges have given a 10-year, 14-year, or even longer jail sentence to rape criminals, and the death penalty for rape and murder. Due to the greater room for discretion, there are a few judgments that show some inconsistency while punishing analogous situations. Following a diligent review of rape statutes, it would appear that the legislature did not pay much attention to the incidence of the crime in the past. For instance, rape offence statistics between 1950 and 1970 have not been generated. Nevertheless, after the Mathura rape case and the subsequent nationwide protests, the legislature was somewhat moved and enacted the Criminal Laws (Amendment) Act 1983, increasing the maximum definition of rape and enhancing the punishment. Judges can inflict less than the minimum punishment in suitable rape cases by giving a special written reason.

Such a situation continued up to the Nirbhaya rape case of 2012 and the passage of the Criminal Laws (Amendment) Act of 2013. The 2013 Amendment has tremendously widened the meaning of "rape" to cover all such prior unattended offenses. A wide variety of sexual assault and rape are now punishable with harsh sentences, even the death penalty. Besides that, the parliament focused on making severe punishments for sexually assaulting children younger than 12 and 16 years following the Kathua rape case. Meanwhile, the Prevention of Children from Sexual Offences Act, 2012 was enacted by the parliament after taking into account the inadequacies of section 354 of the Indian Penal Code 1860 against the sexual abuse and exploitation of a child. The new forms of sexual harassment and child sexual exploitation have been aptly dealt with by this Act of 2012.

Yet, during the present era, it can be seen that considering the mental age has become imperative in this technologically developed or digitally developed world.

### **Leniency shown by the higher judiciary in certain cases**

Our superior courts have been very lenient towards the accused and have exhibited a minimal degree of sympathy towards the victims, though in a pretentious and fashionably correct manner, while deciding on the punishment. There are two superior courts—the Delhi High

Court and the Karnataka High Court—that have differing opinions regarding the rape case. Though the Karnataka High Court held that "rape cases cannot be quashed on the grounds that accused married with victim" in "Soni Nihal & others v. Sandeep Patel & Ors.," the Delhi High Court in "State v. Umesh"<sup>5</sup> "let off rape accused married victims."<sup>6</sup> No matter what our judiciary proclaims, it does not really do. In certain instances, the Court has reduced the sentence of the accused to a mere 6 months and also just imposed a fine of Rs. 500 after taking into consideration that that convict was old.<sup>7</sup> The convict was released on probation of good conduct and also the reason that he had to take care of his old parents. The Supreme Court had held in a case that, since there was no injury on the penis of the accused, it could be deduced that the victim had not resisted and therefore, she was a consenting party.<sup>8</sup> In the case of Rohit Bansal V State<sup>9</sup>, the sentence of the accused was reduced to 4 years on the ground that he was illiterate and unsophisticated who had a habit of drinking. Further, when he had committed the rape, since he was drunk and had a family consisting of his old mother, wife and children. In Vinod Kumar & Anr. V State of M.P.<sup>10</sup>, the Court, astoundingly, had held that since the victim was a Dalit and the accused, an upper caste, under no circumstances would he stoop so low as to have sexual relations with a Dalit. Further, even more outrageous was the statement that rape is generally committed by teenagers whereas this instant case was against a middle aged man, who was a respectable citizen.

One day's penalty has been demanded in a case of rape by a minor, despite our courts' well-expressed concern for the increasing danger of rape cases and their settlement that such cases must not be treated lightly<sup>11</sup> and that an exemplary sentence should be awarded. Defendants are afforded a great deal of latitude for numerous reasons, among them the fact that they are wedded or possess daughters of marriageable age, and the fact that there is not much concern regarding the lost marriage prospects of the victim. The consequences of rape are long known to be of a multi-faceted nature, but the offender's tendency and that of his family members to attack her family members is never seen or even thought about by the court again once a judgment is given in her case. Our judicial conscience seems to have been unmoved even by the UN declaration on victims.

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<sup>5</sup> Cr.L.R.P266/2014

<sup>6</sup> Cr. L.R/94632016

<sup>7</sup> Jai Bhagwan V State of Delhi, 1986 Cr.L.J. 975 (Delhi)

<sup>8</sup> Khatoon v. State of Bihar, 1989 Cr. L. J. 202 (Patna)

<sup>9</sup> Cr.L.A. 660/1999 (2015)

<sup>10</sup> 1987 (1) Crimes 631

<sup>11</sup> Balwant Singh & Anr. Vs State of Punjab, 1995 (3) SCC 709



### **Disparities in sentencing and ideologies for the same offence**

It can also be seen that there is divergence in practice, particularly when it comes to determining the correct level of the penalty and punishment. These types of cases also point out the reality that, although the court can exercise its discretion to take into account the particular facts and circumstances of a case, an overview of many cases with virtually identical facts presents a large variation of sentences for similar offenders. However, it is certain that the courts are not required to follow any set guidelines, and this gives rise to diverse sentencing practices. While discretion is inevitable, it is leading to inconsistency in sentences since there are no guidelines governing this, and the necessity for a fine to be imposed is often neglected.

The open attitudes of the two judges towards the very same crime of rape are another important factor that is evident. In the hands of the first judge, an offender for the very same offence of rape is likely to receive a less severe sentence and a shorter prison term than in the hands of the second judge. As a result of this, it is understandable for offenders to expect their cases to be heard by a given judge and solicitors who have proven to be justifiable in such circumstances until their case exits the given court and is heard by a judge who is more concerned with soft justice<sup>12</sup>. It is said that there are unfortunately too many judges of such nature in our judiciary. In spite of such continuous administration of criminal justice, defence lawyers use every trick in the book to have their clients' (rapists') cases heard in these courts. Aside from pointing to what seem to be "opposite" sentencing rules, Indian authors are convinced that guided judicial discretion where no guidelines exist will cause disparities and discrepancies in the punishment.<sup>13</sup> The criminals are undermining the trust in the criminal justice system of the victims by giving unwarranted power to the rapists. It would not be too melodramatic to say that the demands and attention provided to rape victims are nothing.

### **Conclusion**

Though India has made legislative advances against sexual violence—particularly in response to public outrage—its justice system still stumbles in delivering consistent, survivor-oriented justice. The lenient approach of courts, discretionary sentencing, and the socio-cultural rationalizations provided in rape cases all point to an underlying malaise in the legal system. Such trends not only undermine the deterrent value of law but also strip the judiciary of public

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<sup>12</sup> Raghavan, R. K., "A case study on crime," *frontline*, vol.17 – issue 13, June 4, 2015, New Delhi p. 8

<sup>13</sup> 'Just justices', *The times of India*, March 14, 2014, New Delhi p. 6.

trust. What is acutely needed is not just stricter legislation but a transformation of the institutional culture—judges, prosecutors, and police are taken to task for act or omission. Judicial discretion has to be steered by binding guidelines that place the survivor's trauma and social context above outdated conceptions of morality or prejudice based on caste. Legal reform has to be followed by judicial education, oversight mechanisms, and a willingness to serve the spirit rather than letter of the law. Until the judiciary is a faithful friend of justice, legal reforms are only going to be symbolic and survivors will keep on being disillusioned by the very institutions that are supposed to safeguard them. A rape law that does not punish the non-enforcement of its provisions is no law at all.

What India requires is not just another law, but an institutional and cultural transformation. The parliamentarians need to establish systems that make the police, judiciary, and administration answerable for their lapses. The future of gender justice in India hinges not only on more powerful laws, but on their empathetic enforcement, survivor-oriented implementation, and scrupulous accountability of those who have been given the mandate to protect them.



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