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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

REVITALIZING THE OFFENCE OF RAPE - A CRITICAL STUDY

AUTHORED BY - A.SUMAIYA KHANITHA

Abstract:

Rape a widespread crime against women shows little sign of abating; the unbearable trauma that a rape victim has to bear is further compounded by the insensitive laws and "couldn't careless" attitude of the law enforcing machinery. Until rapists are dealt with severely, the offence will continue to breed and grow. The Indian Criminal Law contains stringent provision to punish the offenders who commit or attempt to commit sexual crimes. However the success of the case mostly depends upon the promptness with which the crime is reported to the investigating agency and the seriousness with which it is investigated.

If these investigating agency does not take timely action to collect crucial and perishable piece of evidence, the case may not succeed in the court of law. Therefore, it is of utmost important that both the victim as well as the investigating agency exercise due diligence and swiftness in handling such crime.¹

Rape is a dehumanizing act is also an unlawful intrusion of the right of privacy and sanctity of a female. It is a serious blow to her supreme honor and offends her self-esteem and dignity. It has been rightly said by Justice Arijit Pasayat; a murderer destroys the physical frame of a victim, a rapist degrades and defiles the soul of a helpless female. The court is thereof expected to try and decide cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized judge is better amount cases of crime against women.

Rape is the most gruesome and barbaric act perpetrated upon women. It is a greater violation of her bodily integrity. It destroys the entire physical and mental composure woman and reduces her to a living corpse. Despite efforts to curb the occurrence of rape it never ceased to exist on contrary, it has multiplied beyond limits. The Delhi medical collage rape case, Mathura

¹ 84th Law Commission Report 1980.

rape case, Mumbai police chowki rape case, the number have increased over the year drawing serious concern from legislators, judiciary and academia.²

Keywords:

Rape, Victim, Offender, New Amendments.

INTRODUCTION

“Women is the companion of men, gifted equal mental capacities, she has the right to participate in the minutest details in the activities of men, and she has an equal right of freedom and liberty with him. She is entitled to a supreme place in her own sphere of activity as a man. This ought to be the natural condition of things and not as results only of learning to read and write. By sheer force of a various custom, even most ignorant and worthless men have been enjoying a superiority over women which they do not deserve and ought not to have. Many of our movement stop half way because of the condition of women.”

Rape is the ultimate violation of the self³. It is humiliating event in a woman's life. This leads to fear for existence and sense of powerlessness. During recent year the impact of the criminal justice system on victim of rape and other sexual offence has received considerable attention, both in legal circles and amongst organization and individuals connected with welfare of women. Sexual offence cause injuries to the woman's body and honour and hence such offences are treated as the most violent and heinous in nature. A sexual assault like rape or attempt to rape leaves a permanent scar on the victim's mind⁴.

Since a sexual crime involves the dignity of the woman to which the so called reputation of the family is attached, rape as per general estimate is the least reported crime in India. A glance at the number of reported sexual crimes and the convictions rate in last few decades reveals that the crime rate of the sexual offence has been increasing. Where the conviction rate of such crimes has been a phenomenal eight-fold increase in the number of rape reported in India⁵.

² Dr. Dipa Duda “Rape Laws in India” IIT Karagpur First Edition 2007.

³ Hilberman, ”Rape””The ultimate violation of the self”(1976)vol,133,No.4.A.M.J,psychiartry page no. 436-437

⁴ Dr.Dalbir Bharti: “Women and the Law “A P H Publishing Corporations New Dehil.

⁵ Crime in India 2011. “The Times of India “Mumbai 8, January 2011.

THE CONCEPT OF RAPE IN INDIAN CRIMINAL JUSTICE SYSTEM

According to the Indian criminal justice system, rape is defined under Section 375 of the Indian Penal Code as sexual intercourse with a woman against her will, without her consent, or with her consent obtained by putting her in fear of death or hurt. In the aftermath of the Delhi gang rape case, the definition underwent further modifications following the Criminal Law (Amendment) Act, 2013, to include every form of non-penile penetration and oral sex. The punishment for rape under Section 376 IPC can vary from a minimum of rigorous imprisonment for 7 years to life imprisonment in aggravated cases. The Indian courts held that the essence of the offense is defined by the absence of consent, and the 2013 amendments explicitly state that the absence of physical resistance does not equate with consent. The approach taken by the judiciary has gradually developed towards imputing guilt in cases of marital rape under certain circumstances awaiting full-fledged criminalization. Recent jurisprudence upholds the integrity of victim testimony, concurrently establishing procedural safeguards against false accusations.

A very important point is the introduction of enhanced penalties, including a death penalty, in the case of especially grievous sexual assaults brought in by the BNS. Gender specificity in this law means that only men can be presented as potential offenders of such crimes, while women can be victims. The procedural matters under Bharatiya Nagarik Suraksha Sanhita have set a time-bound investigation and trial to over within two months after the charge-sheet is filed. Victim protection leaves scope for progressive evolution in jurisprudence consistent with international human rights concerning issuing proceedings in-camera and allowing no inquiries into the sexual history of the victim.

FACTORS INFLUENCING AND PSYCHOLOGICAL IMPACT ON RAPE VICTIMS

I. Influencing Factors

Rape and consequent trauma of the victim are the result of multiple factors that include but are not limited to: societal power imbalances; gender-based hierarchies in institutional mechanisms; pre-existing social relationships between the victim and the accused; coercive mechanisms; facilitation by drugs; and other vulnerabilities in the environment. Sociodemographic factors greatly correlate to the reporting as well as judicial determinatives with regard to the incident.

II. Psychological Impact

Rape victims typically undergo distressing psychological reactions comprising acute stress disorder and posttraumatic stress disorder (PTSD) characterized by intrusive recollections, hyper-vigilance, and avoidance reaction. Clinical papers have well documented the sequel of depression, anxiety disorders, suicidal ideation, and substance dependence disorders as often following these traumas. The rape trauma syndrome progresses through three separate stages: acute disorganization, outward adjustment, and long-term reorganization, and its symptoms can persist for decades after the assault.

III. Neurobiology Mechanisms

Neurobiological changes resulting from the trauma lead to the dysregulation of the hypothalamic-pituitary-adrenal axis and hyperreactivity of the amygdala, which interfere with encoding and retrieval of memories. The psychophysiological alterations will most likely give rise to disturbances in the recollection patterns presented during the testimony, and such phenomena warrant special considerations of evidentiary implications in the legal sphere.

IV. Impact of Societal Response

The secondary victimization caused by the improper response of the institutions, the culture of victim-blaming, and inadequate help aggravate the psychological trauma. Evidence from victims' accounts of experience in the criminal justice system suggests that the procedure, including the requirement of repeated testimonies and cross-examination techniques, often causes adversity to the psychological trauma.

V. Legal Acknowledgment

The evolving Indian jurisprudence, through a series of significant judgments including *Bodhisattwa Gautam v. Subhra Chakraborty* and *Lillu v. State of Haryana*, has recognized psychological trauma as within the ambit of rape victimization. The first judgment provided an order for the establishment of compensation for rehabilitation of the psychologically injured, while the second rejected the use of inference from evidence regarding the behavior of the victims in the absence of proper validation.

INITIATIVES TO PREVENT SEXUAL VIOLENCE

Legal and Policy Framework:

The Prevention of Sexual Violence Act (2013) provides a well-set institutional framework-comprising specialized tribunals for speedy trial of sexual violence complaints and mandatory reporting provisions for educational and health institutions. Educational Intervention: Statistically significant reductions in assaults were observed through the establishment of a standardized prevention curriculum for educational institutions-delivering consent education, healthy relationship dynamics, and bystanders intervention strategies-according to documented program evaluations. Institutional Safeguards: These include workplace harassment prevention frameworks that empower organizations under the Prevention of Sexual Harassment (POSH) to establish Internal Complaints Committees with an investigative authority and remedial powers contained in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Community Based Initiatives: Empirical community intervention initiatives that involve male mobilization, formation of vigilance committees in the community, or sensitization programs that engage all members of the public have shown success in the context of different jurisdictions on the assault rate reduction metrics.

CONCLUSION AND SUGGESTIONS

All-in-all, the jurisprudential growth of rape laws in India denotes a slowly evolving recognition of sexual autonomy but is hindered by the procedural complications and deficiencies in implementation. Documentation of psychological trauma necessitates a victim-oriented and trauma-informed adjudicative approach that recognizes neurobiological responses to trauma. Prevention programs have demonstrated varied levels of efficacy in various institutional contexts, with an integrated approach scoring maximum on empirical evaluation parameters.

SUGGESTIONS:

The law should reform by enacting legislation on standards of trauma-informed investigation requiring specialized training of all investigators, prosecutors, and others in law enforcement positions. Setting up victim support units in hospitals with a standardized protocol for trauma evaluation and integrated legal aid service;

"Embedding streamlining of the adjudication process in respective amended legislatures with

an appellate court comprising specialized tribunals applying innovative evidentiary standards and acting to the trauma-forced inconsistencies in the testimony."

"Compliance requirements for mandatory institutional support engaging educational institutions to subject comprehensive prevention programs to uniform evaluation metrics."

"Enact community rehabilitation programs based on therapeutic jurisprudence principles and restorative justice mechanisms where locally deemed appropriate."

