

Notion of Victim Precipitation in Male Dominating Indian Society and Rape Laws

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Abstract – Women are part of vulnerable group and are declared as a weaker section by the Indian Constitution. It is ironical that when Indian mythology places women on a very high pedestal and they are worshiped and honoured as Goddess of Learning-Saraswati; of wealth -Laxmi; of power- Parvati, the Indian society adopts double standards in so far as her guaranteed rights are concerned. There has been over the decades alarming decline in moral values all around and the contemporary world faces a great challenge, particularly in India. In the name of progress and advancement, the people are losing out on moral values. It is rather sad that while one keeps celebrating women right in all spheres, the people exhibit no concern for her honour and her dignity. It is a sordid reflection on the attitude of indifference of the society. An attitude of men to treat women as a property, to be possessed to the extent beneficial to them, has almost become a value in itself. Further, an unchaste woman is treated as a symbol of sin, to be discarded from the society irrespective of her involvement or innocence, or the hostile circumstances that placed her in that situation. This newly highlighted, yet age-old problem regarding a safe and secured life for women folk is worthy of attention with an open mind. At one, there is doubt as to adequate security for moral values in existing criminal law; at another, there is a fear as to the development in the people of disrespect to these values.

Key Words – Vulnerable, Weaker Section, India Constitution, Crime, Gender justice, Human Rights, Rape Laws

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INTRODUCTION

Women, no less than men, require to be treated as 'person, not statistical abstraction.' Notwithstanding the enactment of the laws relating to dowry, rape, violence against women, the ground reality is rather distressing. It appears that our society is becoming a psycho-sick society with an uncivilized behavior. Whenever crime is committed against women and that took a violent crime, it sends shock waves to the society but those shock waves burst like bubbles in a very short span. Moreover, it is also true that in the male dominated society of India, in spite of heinous crime against women, women victims are looked with a sense of hatred and stigma instead of hatred against the rapists. Prejudice of the people towards rape needs serious attention and the society must change its attitude.

The Indian Constitution advocates social justice, a poignant component of which is gender justice. What is demanded is neither charity, nor grace, nor as legal aid to a weaker sex. The militant claim is the woman's right to be oneself, not a doll to please, nor an inmate of a workhouse. She has the human right to be woman. The courts have taken greater recourse to the

right to life and personal liberty guaranteed by Article 21 of the Constitution for mainstreaming women's right into the paradigm of human rights.

The concept of rape can be best understood by considering rape as a crime of power and not of lust. Rape is not sexual act; it is the most blatant form of violence perpetuated against women. In India, chastity and virginity is considered to be great assets of a woman and loss of chastity whether out of choice or force, is a great handicap. On being raped, the woman is severely criticized and condemned for loss of chastity. The raped woman faces not only a personal sense of shame, but also is weighed down with guilt for no fault of her. In a society like ours, where a woman's chastity is valued more than her intellect, a woman who has been raped is ashamed and afraid to identify the criminal. Rape must be understood as the gravest kind of sexual violence against women a crime of power, which is an extreme manifestation occurring in the continuum of sexual violence. Rape stems from sexist values and beliefs and it is not simply an issue affecting individual woman. It is a social and political issue

directly connected to power imbalances between men and women in society.

The traditional concept of male and female sexuality, males being sexually aggressive and females sexually passive, paves the way for the assumption that rape is a natural fact, the occurrence of which cannot be stopped. In patriarchal societies, the social training imparted to the individuals, perpetuates the belief that domination is the inherent aspect of all sexual activity and thus, emerges the close association between violence and sexuality. In fact, violence and sexuality remain so intricately intertwined that it becomes difficult to draw a line between normal heterosexual relations and rape.

The rape victim not only undergoes a sequential pattern of emotional reactions called *rape trauma syndrome* but is also ostracized from the society. The rape victim undergoes varied reactions which may be immediate or long term reactions, aimed at physical and mental integration, worldly adjustment and personality adjustments. In patriarchal societies, virginity and chastity are considered to be the great assets of a woman without which her existence becomes meaningless. The jurists and criminologists have identified the motivation for rape; and on the basis classify the typology of rape and rapists, be it may blitz rape, confidence rape; or the criminal rapists, the mentally ill rapist, group reformer, incompetent Romeo, debt collector; yet rape is considered to be a transgression against chastity and the raped woman is severely criticized and condemned for loss of chastity. For women, the awareness of the possibility of rape determines their life in a very basic way curtailing the choices of daily behaviour which are extremely threatening to the liberty of women.

Rape remains a vastly underreported crime due to the reactions of the society and the existence of certain myths surrounding the concept. There is a whole package of myths and lies which mask the real problem of rape and diverts the attention of the society, so the key issues of rape remain obscure and ambiguous and the responsibility of rape is attributed to the woman. Few of the commonly held myths that only young and attractive women get raped, men rape because of uncontrollable urges, women ask for it or women cry rape reflect that it is the women's sexuality which is to be held responsible for provoking or precipitating her rape and men are innocent people who cannot control their sexual urges and commit rapes because the female sexuality provides a provocation which they cannot resist.

The existence of these myths shield the fact that rape is a power crime and the coercion of masculinity provides the basis for its occurrence. Rape is a producer of sexist society it is the price, which a society based on coercive sexuality must pay; where women are seen as objects for male pleasures, as passive creatures needing and wanting to be dominated and controlled. Thus, rape is the

manifestation of institutional coercion that flows from the structure of economic, social and political relations between men and women generally. Historically speaking, the Hindu scriptures have seriously criticized the unlawful coming together of a man and a woman for sexual enjoyment brought about by force, deceit or sexual passion; and has prescribed severe punishment on the person guilty of the same ranging from the confiscation of the property, extermination of genital organs, social ostracization and even death sentence. The female is also not left scot free and had had to undergo a penance for the same. The punishment for sexual exploitation varies according to the caste, the protection and the marital status of the male and female.

Even the Muslim law, prescribes that a woman has to be respected and protected under all circumstances, whether she belongs to your own nation or to the nation of an enemy, whether she follows your religion or belongs to some other religion or has no religion at all. A Muslim cannot outrage her under any circumstances. All promiscuous relationships have been forbidden to him, irrespective of the status or position of the woman, whether the woman is a willing or an unwilling partner to the act. The words of the Holy Quran in this respect are: "Do not approach (the bounds of) adultery". Heavy punishment has been prescribed for this crime, and the order has not been qualified by any conditions. Since the violation of chastity of a woman is forbidden in Islam, a Muslim who perpetrates this crime cannot escape punishment. Preservation of the dignity of the females has been a concern world over and all the countries try to preserve the same by classifying the acts likely to interfere with the dignity of the females, be it may the developed country like England under the *Sexual Offences Act 2003*, or the United States Of America under the *Federal Criminal Code of 1986*; or the developing country like India under Indian Penal Code of 1860.

In India, the consolidation of the criminal acts took place during British regime when *Thomas Macaulay* drafted the Indian Penal Code and the same included the provisions dealing with the offence of rape. It defines *Rape* to be a sexual intercourse by a man with a woman against her will, without her consent, or with her consent; when her consent has been obtained by putting her or any other person in whom she is interested in fear of death or of hurt; or 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; or 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, who is unable to understand the nature and consequences of that to which she gives consent; or with or without her consent, when she is under sixteen years of age. It also prescribes the punishment to a convict with

imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine; unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both. The court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

This legal definition of rape focuses only on vaginal penile penetration; while oral and rectal penetrations remained ignored and the concept of digital rape (rape with objects) stands completely unacknowledged. The criminal justice system adopts the attitudes of disbelief and hostility and treats the victim with suspicion instead of sympathy. Raped women are subjected to an institutionalized sexism that begins with their treatment by the police, continues through a male dominated system influenced by the notions of victim's precipitation and ends with the systematic acquittal of many defector guilty rapists. At every step in a rape trial, there are systemic obstacles and discriminatory attitudes for the victim, which result in complete negation of her human rights. When a victim reports the case to police, she sets in motion a complex and lengthy process of legal system. It does little to help the woman to recover from the ordeal of rape; and much to compound the initial trauma she experienced at the hands of the offender. The victim has to prove that she was raped. Her prior lifestyle and sexual conduct are laid before the Court; and her consent or lack of it, is judged by her reputation. Her sexual character determines the innocence or guilt of the accused.

Therefore, the courts assume greater importance in dealing with rape and sexual violence cases in a more realistic manner. Sexual violence apart from being a dehumanizing act is an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity - it degrades and humiliates the victim; and where the victim is a helpless innocent child, it leaves behind a traumatic experience. *Justice Krishna Iyer* decries the lopsided view of gender-justice. His lordship pointed out that the fight is not for woman's status but for human worth. The claim is not to end inequality of women but to restore universal justice. The bid is not for loaves and fishes for the forsaken gender but for cosmic harmony, which never comes till woman comes.

In recent years, the role of the judiciary has extended beyond issuing directives on social issue concerns to ensuring effective and fair implementation of the same. As a judge this requires elimination of subtle ways in which the courtroom perpetuates discrimination and violation of women's right to sexual integrity. A judge needs to be proactive and must take charge of its courtroom to ensure that the subtle

play of discrimination through spoken and unspoken words is eliminated.

The survey of judicial decisions shows that the courts in India have been endeavoring to reconstitute the fundamental rights to life and liberty guaranteed by Article 21 of the Constitution in the context of women's experiences and concerns. This has resulted in the meaningful expansion of those rights. Fundamental rights have been engendered by mainstreaming women's rights into them. The result is reached by a critical appraisal of the existing laws and practices from a gender sensitive perspective. This does not mean mere extension of the rights available to men and women but means a reconstitution of those rights as to include the aspects of life and liberty, which are specific to women within the fold of that right. The decisions in rape and sexual harassment cases show that the court are alive to the need to make changes in the institutional structures with a view to making women's rights effectively enforceable.

The Judiciary would do well to heed the words of *Krishna Iyer, J.*, that "social justice is not constitutional clap trap but fighting faith which enlivens the legislative text with militant meaning"; or the opinion of *Chinnappa Reddy, J.*, that "the discovery of new principles and the creative application of old principles is the only way for the judiciary to keep pace with the vast social change taking place outside the court and to contribute to these changes." If they did, there would be none of these decisions, which go clearly against the very principle of equality and non-discrimination promised in the court. The judiciary has in some cases come out of their ivory tower and attempted to interpret the existing law in a manner which brings about social justice. Like the other branches, the judiciary has also realized that women are no longer going to be satisfied by being treated as beneficiaries of welfare doles but wish to be actively involved in the developmental process in the country. Some of the observations of the Supreme Court reflect this awareness of the change though regrettably not always has this consistently been reflected in the decisions. This does not mean that complete gender justice has been achieved.

Much more needs to be done. In fact, what has been achieved is little as compared to what needs to be achieved. Whatever the law may or may not provide, the efficiency of law depends upon how effectively it is enforced. The judicial attitude is not uniformly favourable to gender equality. The cases on rape continue to reflect male chauvinism of the lawyers, judges and police officers. The attitude of the Supreme Court towards rape victims does not always appear to be impartial. The Supreme Court, in *Prem Chand's case*, reduced to half the sentences imposed on two constables convicted of raping a woman at a police post on the ground that rape victim was a woman of "easy virtue." This type of reasoning is open to question from all sides. The victim's sexual morals and past sexual experience

has little to do with the heinous crime of rape. A prostitute can be a victim of rape just as much as a virgin or respectable married woman. And the rapist is no less guilty because the woman he inflicts himself upon has had sexual experiences with other men.

As long as the woman is not a conscious and willing partner, the act is, by definition, rape. If the reasoning of the Supreme Court is accepted to be correct, then logically, there should be no punishment for a culprit who rapes a woman of easy virtue. In **State of Maharashtra v. Madhukar Narayan Mardikar**, the court rightly upheld the self-esteem of the woman of the easy virtue and opined that she too has her right to privacy and nobody can violate her privacy without her wishes.

Under the new law, Court can impose a punishment of less than 10 years after recording adequate and special reasons. The reasoning of the Supreme Court that the rape victim was of "easy virtue" is neither 'adequate' nor 'special' so as to justify the reduction of sentence by one half. In rape cases the judicial decisions exhibit a paradoxical stance as some judges have laid emphasis on technical rules of evidence, and others have had their feet firmly imbedded in the Indian social setting and have been sensitive to the inequalities and oppression faced by women. It is ripe in time that the latter view must gain precedence over the former. In **Sanya alias Sanyasi Challan Seth v. State of Oriss**, the High Court held that there were glaring inconsistencies in the prosecution case and the injuries sustained by the victim could be self-inflicted. The pragmatic instance of the judiciary can be exhibited from the case of **Delhi Domestic Working Women's Forum v. Union of India**, wherein the court gave ample directions for the help of the victim of sexual assault, vis;

1. Complainants of sexual assaults should be provided with legal representation. The victim's advocate should not only assist her in filing the complaint but also guide her in getting other kinds of assistance like psychiatric and medical,
2. Legal assistance would have to be provided at the police station as well as in view of the distressed state of mind of the victim,
3. Police should be under a duty to inform the victim of the right to get representation before asking her questions and the police report should state that she was so informed,
4. A list of advocates should be prepared who were willing to act in these cases,
5. Such advocates should be appointed by the Court, but to avoid delay advocates might be authorized to act in police station before permission from the court had been obtained,

6. A criminal injuries compensation board should be set up,
7. Compensation for the victim should be awarded by the court on the conviction of the offender and by the criminal injuries compensation board whether or not a conviction had taken place.

Furthermore, in **State of Punjab v. Gurmit Singh**, it was opined that the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in court just to make a humiliating statement against her honour such as was involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which had no material impact on the veracity of the prosecution case or even discrepancy in the statement of the victim should not, unless the discrepancies were such which were of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression were factors, which the court should not overlook. The testimony of the victim in such cases was vital and unless there were compelling reasons, which necessitated looking for corroboration of statement, the court should find no difficulty to act on the testimony of victim of sexual assault alone to convict an accused where her testimony inspired confidence and was found reliable. Seeking corroboration of statement before relying upon the same, as alone, in such cases amounted to adding insult to injury.

Though the Supreme Court has exhibited a dynamic attitude in ensuring gender equality, judicial activism is yet to percolate to the lower levels of the judicial system. It is hoped that the forward looking ideas reflected in the decisions of the Supreme Court will percolate to the lower levels of the judiciary and bar and that will ultimately expedite the social transformation that the feminist ideology envisions. The researcher has on the basis of the study concerning the area of research identified the grey areas which need to be looked into to make the Indian society humane and conscious to the plight of the females, such as;

SPECIAL LEGISLATIONS FOR RAPE IN INDIA

The Indian Penal Code was drafted in 1860, and is still holding the ground to deal with the cases of sexual assault against the females including rape. The substantive Law stands thoroughly complemented by the procedural Laws, i.e; Criminal Procedure Code, 1973 and Indian Evidence Act, 1872. Due interpretation to the legal provisions contained in these enactments has been provided by the Indian judiciary, yet despite of these significant developments, the crime rate against women remain unabated. The data put forth by

national crime record bureau portrays the sordid state of affairs. The statistical data from 1953 to 2010 reveals that this offence of rape has increased tremendously i.e. 791%. Statistics given above reveals that the offence of Rape is increasing at a very high rate. It is not enough to punish rapists nor is it enough to treat (reform) therapists. Therefore, the increase in crime rate can be attributed to the shortcomings of the legislations as one of the reasons warranting the adoption of altogether a fresh piece of legislation especially dealing with the cases of sexual assaults concerning females. Recently there has been an attempt in India to frame out a special piece of legislation dealing with sexual assault in the form of **Criminal Law Amendment Bill 2012**. This bill has been prepared on the lines of Sexual Offences Act of 2003 of England. The most impressive feature of this bill is, it gives protection not only to females but is gender neutral.

CLASSIFICATION OF RAPE

Two schools of thought are significantly predominant in the classification of rape. One school considers rape as a sexual offence; whereas the other considers it as a sexual assault. In recent times the school which considers rape as sexual assault has gained predominance over the other school. It believes that Rape is an act of aggression in which the victim is denied her self-determination. It is an act of violence, which, if not actually followed by beatings or murder is nevertheless always quite close to a life threatening situation. It is an act of violation, which leaves woman in a state of humiliation, degradation, fear and rage. Recent research findings contradict the traditional view and establish that rape is an act of violence and aggression, reflecting the assailant's feelings of inferiority and insecurity and is far from being sexually motivated. At the most, rape can be considered as the sexual expression of frustration and anger and the motivation to assert power and authority. It is a vain delusion to perceive rape as the expression of uncontrollable desire of sex rather it is a declaration of domination, whereby the rapist loses control over his aggressive drives and not sexual passions. This school of thought favours the *rape as sexual assault* approach, which stresses the violent character of rape without denying its sexual overtones or undercurrents. These feminists are convinced that rape is a power crime directed against the female sexuality. They maintain that for the power rapist, the choice of the genitals as the object of aggression is not accidental, but essential because he is interested in inflicting a particular kind of damage on the victim. It is imperative that the offence must be seen in terms of violence than sexuality. As long as rape is perceived as an act of sexuality rather than aggression and hostility, it will continue to be interpreted as predominantly pleasurable to both parties rather than harmful to the victim. It is emphatically pointed out that rape should be removed from the category of 'sexual offences' and reclassified as an assault for recognizing and respecting the human rights of women.

NEED TO RE-DEFINE RAPE AS AN OFFENCE

Even in the absence of the above parameters of improvement, there is urgent need to redefine rape so as to keep abreast with the methodology of sexual assaults. *Flavia Agnes* has remarked that 'in all criminal offences, injury and hurt caused by using weapons is more grievous than the one caused by the use of limbs but in case of rape, the injury caused by the use of iron rods, bottles and sticks does not even amount to rape.' The lacunae inherent in the definition of rape make it impossible to recognize the concepts like marital rape, digital rape, etc., thus rendering the definition a hollow statement.

Jaspal Singh, J., of Delhi High Court, has rightly held in **Smt. Sudesh Jakhu's case** that intrusions of other objects in the vagina cannot be brought to convict a rapist under Section 376 of the IPC, 1860. The Learned Judge in this case very cogently remarked that 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 rights include power to define a crime and provide for its punishment. Therefore let the legislature intervene and go into the souls 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 the male genitals is realized, though involves an act of sadism which is likely to cause the victim for greater pain and physical damage than rape itself. Therefore 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 penile penetration in the course of carnal intercourse.

AGE OF CONSENT IN RAPE CASES

The age of consent as maintained by Section 375 had come under great criticism from various legal experts and feminists, as it is not in consonance with the other prevailing laws. It remains difficult to find out the reason for discrepancies among various laws regarding the age of consent. When a girl is not considered fit for marriage when she is below 18 years of age; how can she become fit for sexual intercourse otherwise with or without consent. On one hand the **Child Marriage Restraint Act, 1929** does not permit marriage of a girl below 18 years of age and on the other hand, penal law of India does not recognize forcible sexual intercourse with a wife between the age of 15-18 year.

The punishment provided under section 376(1) for marital rape of a child wife between 12-15 years is also too lenient viz., two years or fine. It is imperative to follow the pattern of **Michigan Criminal**

Sexual Act that eliminated consent as an element in the crime of rape, focusing on the conduct of the offender, rather than the consent of the victim. From a proud and passionate woman's point of view, it is essential to conceptualize rape in broader terms and include every sexual act in which female's positive desire is absent. The positive desire should be determined by relative equality between the parties and absence of coercion rather than consent.

ESSENTIAL OF CORROBORATION IN RAPE CASES

There is a serious debate over the issue of corroboration in determination of rape cases amongst the member of the judiciary. The traditionalists believe that corroboration is must to support the claims of the rape victim whereas the radicals believe that the rape victim will not make false accusations therefore, there is no need for corroboration.

In *Rafiq v. State of U.P., Krishna Iyer, J.* referred to the requirement of corroboration as the 'sacred cows of criminal law' in Indo – Anglian jurisprudence, which are superstitious survivals and need to be re-examine'. His lordship further observed that 'we cannot cling to a fossil formula and insist on corroborative testimony'.

In another landmark judgment, *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, the Supreme Court observed –

In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to the injury. Why should the evidence of the girl... be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society.

In *State of Punjab v. Gurmit Singh*, the Supreme Court rightly observed that Corroborative evidence is not an imperative component of judicial credence in every case of rape.... a woman or a girl subjected to sexual assault is not an accomplice to the crime, but is a victim of another person's lust; and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity test that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty.

POLITICAL SENSITIVITY TOWARDS VICTIMS OF SEXUAL ASSAULTS

All the suggested reformatory measures will not prove fruitful unless the political institutions become sensitive to the plight of victims of sexual assaults. The reports of the commissions must not fell to deaf ears, but must receive a passionate consideration. In India, the Law

Commission of India had devoted four of its Reports, namely, the 42nd, the 84th, the 156th and 172nd Reports, to the Indian Penal Code, 1860. The 42nd and the 156 Reports concentrated on the overhauling of the Indian Penal Code, 1860 while the 84th and 172nd Reports offered a set of comprehensive suggestions for reform in the substantive law relating to rape. The central legislature, however, had favourably responded to the 84th Report (and to the reiterated recommendations of the Law Commission in its 42nd awaiting attention of the legislature report) by amending, through the Criminal Law (Amendment) Act, 1983, substantive law relating to rape, but 172nd Report is still awaiting a positive response. Such a delay speaks of political apathy to the problem in hand and must not happen in a democratic set up.

VICTIM CARING INVESTIGATION AND TRIAL PROCEDURE

As highlighted earlier that rape is not only a physical assault on the victim but the cruelest violence perpetuated upon her having the potential to destroy the physical, mental and social personality of victim. She needs special care and support to manage the continuing trauma for the proper cooperation to the investigating and prosecuting agencies.

The roughness of prevailing procedures many a time discourages the victim in reporting the crime; and even if she musters the courage to report, fails to maintain the same till the tardy process of trial resulting in the undeserved acquittal of offenders. An Indian Supreme Court Judge while strongly condemning the "fossil formulae" applied to rape cases referred to the treatment of rape victims by the legal system as 'the ravishment of justice.'

There is also unfortunate delay in disposal of cases in the Court of law. There should be endeavour by the Courts to reduce the time taken for disposal of cases in view of the trying and diagnosing situation that the victim and her family members undergo during the trial stage. The provisions of Evidence Act regarding relevancy of facts notwithstanding, some defense counsel adopt the strategy of continual questioning of the victim as to the details of rape. The victim is required to repeat again and again the details of the rape incident not so much as to bring out the facts on record or to test her credibility, but to test her story for inconsistencies with a view to attempt to twist the interpretation of events given by her so as to make them appear inconsistent with her allegations.

The courts should not sit as a silent spectator while the victim of crime is being cross-examined by the defense. It must effectively control the recording of the evidence in the court. While every latitude should be given to the accused to test the veracity of the victim and the credibility of her version through cross-examination, the court must also ensure that cross-examination is not made a means of

harassment or causing humiliation to the victim of crime.

With the increased participation of women in the fields of policing, layering and the judiciary as well, it would be desired if rape cases are investigated and prosecuted by competent women police and prosecution official who in turn will not only ensure effective prosecution of the offender but also take care of the physical, mental, social and other needs of the victim.

TRAINING PROGRAMMES AND SPECIAL COURTS IN RAPE CASES

- (a) In order to rule out gender bias attitudes against rape victims, there should be training programmes for members of Judiciary and the Bar to build awareness regarding the women's plight in rape cases. It will help in the formation of attitudes conducive to the effective interpretation and implementation of law.
- (b) The victim of rape encounters police officers at the very first stage when she decides to lodge a complaint. The police officers must be given special training to deal with the victims of sexual abuse. Gender sensitization programmes will help the officers to have the required considerate approach for rape victims. Preferably there should be women officers in every police station to attend to such females.
- (c) The rape cases require a neutral and sympathetic judicial approach, which is possible when suitably trained and equipped judges hear and decide the cases. Setting up of Special courts for hearing the cases of sexual assault is strongly recommended. In these special courts, women judges should be there so that the victim feels comfortable in narrating the details of the sexual assault perpetrated on her.
- (d) In rape trials, the lack of appropriate evidence leads to the acquittal of the accused. The low conviction rate in rape cases can be attributed to the lack of coordination between the investigating officers and the public prosecutors. Appropriate training programmes should be conducted for the public prosecutors and the police officers who investigate rape cases, so that through proper coordination between them helps in receiving justice for the victim. Furthermore, the modern investigating technique should be adopted in crime investigation which would be of great help in determining the cases of sexual violence against women.

JUDICIAL SENSITIVITY IN RAPE CASES

The courts are expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized judge has better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos. The judiciary can neither prevaricate nor procrastinate. It must respond to the knock of the oppressed and the downtrodden for justice by adopting certain operational principles within the parameters of the Constitution and pass appropriate directions in order to render full and effective relief. Judicial activism generally encompasses an area of legislative vacuum in the field of human rights. Thus, one of the most important tasks a judge is expected to perform is to be responsive and responsible. He must be creative and may create precedent, where no law exists for women but where it is actually needed.

Judicial decision can influence and under certain circumstances even compel the government to enact the appropriate provisions to cover up the deficiency in the existing law, as has been highlighted in the case of ***Vishakha v. State of Rajasthan***. The other important task is that the judge or judges must be sufficiently sensitized to the problem. In recent years there is a welcome trend and the court has tried to humanize the system to the women victims from the battering given to them by the trial process.

Gender sensitive judges can take more proactive role in the proceedings rather than simply responding to the material presented by the lawyers. They can exercise their discretion to assist the process wherever appropriate. They can recognize the need to obtain the best quality evidence from witnesses particularly women in criminal trials who have been subjected to violence and women litigants in civil cases. They can pay the particular attention to the ways in which the evidence is recorded. In their appreciation of evidence they can be aware of the gender context and can control stereotyping.

The court dealing with rape cases should be sensitive towards the conditions of rape victims and award punishments to rapists with great seriousness towards women conditions in the Indian society. 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. Severe/more punishment for police culprits can be justified on the grounds of responsibility of police towards the society, as their business is to keep their shoes always on, rather than indulging in corrupt activities. Historically, it is apparent in India that there is a strong prejudice against a person who commits rape. The doubt as to the protection of this value under criminal law on rape is unwarranted, for the failure in protecting the chastity of women is not the defect in criminal law but the inefficiency on the part of the administrative

and judicial machinery to effectively implement the law and administration of justice.

RAPE CRISIS CENTERS

Rape Crisis Centers are set up in countries like Australia, Canada, America, United Kingdom, etc. These Centers provide their help through their telephonic help lines also. These Centers provide the rape victims with medical help, counseling, and financial help by way of providing job opportunities etc. The help of social workers and counselors is provided to the rape victims in order to help their recovery from the trauma and the subsequent practical difficulties.

Such Centers should be set up in India to provide for medical aid and counseling to the rape victims. Another very important aspect is to provide counseling for the family members of the victim. In times of distress and emotional trauma, best support can be provided by the family members. Sometimes, due to their biased reactions towards the rape victim, they may not cooperate well with the victim. In such cases, counseling of the family members will be a great help in the recovery of the victim.

PROVISIONS FOR SENTENCING IN RAPE CASES

Only a fraction of all cases are reported, only a fraction of Reported cases are investigated and lead to trial in the courts and a very minute fraction of accused are convicted and despite being a clear cut provision for imposing minimum sentence in Section 376 IPC, 1860 not only the Trial courts but the High Courts and in some cases even the Supreme Court has resorted to lower sentence on those grounds which are tough to justify. No doubt that the courts have the power to award lower sentence than the prescribed one in the deserving cases to meet the ends of Justice. But sometimes the courts abuse this power. However, indiscriminate use of judicial discretion can be regulated by enacting a legal provision whereby the award of lower sentence than the prescribed one will be effective only after confirmation by the higher courts than the sentence awarding courts based on cogent, judicially and justly appreciable grounds.

COMPENSATION AND REHABILITATION FOR RAPE VICTIMS

Though Section 357, Cr.PC, 1973 provides for victim compensation but in reality the concept of the victim compensation has remained elusive. Barring a few exceptions this provision has its inherent limitations like -

- (i) Conviction of the accused in the case, and
- (ii) His financial capacity and willingness to pay the fine.

However, in some of the cases, the courts of our country treating rape as a violation of fundamental rights of victim has awarded compensation in certain cases but the same is not a rule but an exception in view of all the cases taken together. The need of the hour is the creation of state sponsored victim compensatory fund particularly for heinous offences including rape. This award should have a victim's need based procedure and should be totally free from the end result of the prosecution that is conviction or acquittal and should come into action the moment FIR is registered or cognizance is taken of a complaint. Since rape is a crime, which kills the victim not only in her own eyes, but also ruins her familial and social life. Such victim needs affectionate and sympathetic treatment and cares from the family, society and the governing system not as a matter of grace but as matter of right enjoying corresponding duty on these agencies as they fail to honour their commitment of providing a safe and secure environment to the victimized girl or woman. For restoring confidence and hope in victim, she needs proper care, affection and duty bound help from all the agencies.

MEDIA SENSITIVITY IN RAPE CASES

In a democratic set up, one cannot underestimate the role of media which acts as the fourth wing of the government and strengthens the democratic working of the institutions. The media reflects the positive attitudes as well as the negative attitudes. The positive role of the media brought about a significant change in relation to custodial rape and led to the reformation of law in the aftermath of *Tukaram v. State of Maharashtra*. On account of the negative attitudes in glamorizing the rape trials, the rape trials are held necessarily in camera. The media must be sensitive to the plight of the rape victim and must not highlight the name or any inference leading to the identification of the victim, as it will be counterproductive. The media must not highlight the case where the offender has been acquitted but must invariably highlight those cases where the offender has been convicted, as it will infuse the feeling of deterrence among the people.

CONCLUSION

These areas which are discussed above need immediate attention by the legislators, by the executives and by the judiciary. The due presentation and recognition of human rights of a class of persons, who are not only systematically but also institutionally exploited and constitutes one half of the population of our country as well as mankind, is the immediate requirement of our society. Studying the laws, the process, the application of those laws, and one thing is certain- the entire structure of justice needs an over haul, otherwise the victim shall no longer be the woman, but humanity as a whole. In India rape laws have come a long way from their inception in the Indian Penal Code in the 1860s. Many changes that have taken place in the

Laws have been progressive yet some changes which have been long overdue like criminalizing marital rape still have to be done. Some laws as the POCSO despite the best intentions end up having some negative side effects. When you see the evolution of rape laws in India it is easy to notice a pattern there's a big rape case with a lot of publicity that shocks the nation and the government to reduce public outrage brings in some changes in the existing laws. However, for every rape that is reported and becomes public, there is thousands of case which never get the same public attention. This is the right time to take big decisions or steps otherwise the whole society will bear the irreparable losses. We all can together fight against this evil and even can wash away the blots but for that we need to take strong decisions in this regard like supporting the legislators to make stringent laws for the rapist and not to interfere in the court proceedings being bias due to any reason.

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