

Reasons for Dereliction in Implementation of Laws Related to Sexual Offences in India

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Abstract – In present times, the cases of sexual assault and their lengthy trials have become the most complex matters which come before the Criminal Courts in India. Judiciary many times faces different problems while solving these matters. Taking other crimes into consideration like in case of murder, theft and non-sexual assault, the prosecution must establish that a crime has indeed been committed. Only then does it become necessary to enquire who committed it. People around the country threaten others to file a case against them in case any wrong happens with them. But things are completely different when it comes to offences related to sexual assault. As, in many cases, a girl is being raped and murdered but family members instead of asking for justice from the courts, declare it as an accident. They deny reporting the case. There may be various reasons for it; say they are concerned about security of other woman in the house, it may ruin their respect or image in the society etc.

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INTRODUCTION

“Justice delayed is justice denied”

In case if she survives, she is taught not to raise an alarm as criminal justice system re-victimizes them in its process, whether it's been in court or by the police authorities or advocate on the side of the accused. Though, the vital purpose of criminal law is to protect society against criminals and law-breakers. For this purpose, it provides the machinery for the detection of crime, apprehension of suspected criminals, collection of evidence, determination of guilt or innocence of the suspected person, and the imposition of suitable punishment on guilty person. But at present, the issue of sexual offences and more specifically the role of criminal justice system in managing, investigation and prosecuting sexual offender have attracted controversial debate, in both public and legal spheres.

Sexual offences pose a frightening challenge for the police and for the criminal justice system. Though a victim plays an essential role in the criminal justice process, there are many causes why rape and sexual assault are not prosecuted. This chapter will therefore report the challenges in prosecuting sexual offences and the institution involved in administration of justice. The major reasons for dereliction in implementation of laws will be taken into consideration that even after having ample number of laws, why there is delay in executing them.

CHALLENGES IN PROSECUTION OF SEXUAL OFFENCES

1. Non-Reporting of Sexual Violence

There are some reasons why a woman hesitates to report a case of sexual harassment at police station which are as follows-

- Police interviews may be several and may be done by numerous officers.
- Police make a decision whether the report is founded or unfounded which means they may decide whether they believe the woman or not.
- They may even say that they believe her but there's no point to go ahead because it is unlikely to be successful.
- Some women who insist may be threatened with charges of mischief by police. There is not a lot women can do if police failed to investigate properly.
- Police may adopt further investigative steps like interviewing the alleged offender.
- Women sometimes ask for the rape kit results and police are not obliged to tell them

what they revealed or to use it or to rush results.

- Even if the case makes it through police, they frame charges at lowest level.
- If the police investigation is not found to be proper, then courts can also drop charges or plead them away.
- Women experience vast mental disturbance through the way cross-examination is done and disclosure of their records, past sexual history.
- Convictions are rare.

It has been also observed that the enormous majority of women who are raped or sexually assaulted do not report the crime to police in many cases because they have diminutive confidence that their attacker would be brought to justice.[1] Moreover, the survivors of sexual assault mention the following causes for not reporting a sexual assault'[2]:-

- Distress of retaliation
- Personal problems
- Reported to a different official
- Not significant enough to respondent
- Belief that the police would not take initiatives to help
- Did not want to get offender in trouble with law
- Did not want family to know
- Did not want others to know
- Not sufficient proof is available
- Fear of the justice system
- Did not know how to get justice and to whom to contact
- Feel the crime was not serious enough as it keeps on happening in the society
- Fear of lack of evidence
- Unsure about offender's intent

2. Prolongation of Police Investigation

Where the prime obligation of Police authorities is to protect life, liberty and property of citizens, this is true that it results in major challenge in prosecuting not only sexual offences but other offences too. Arrogance

of police and its endless investigation policy especially in sexual offences can be discussed under following heads as mentioned under:-

1. Non registration of FIR (First Information Report)
2. Negligence in investigation on the part of police authorities conducting investigation, where FIR is registered
3. Dual Victimization of the victim if she reports a complaint against sexual assault
4. Insufficient information about offences related sexual harassment

2.1 Non-registration of FIR (First Information Report)

The malpractice of non-registration ascends from numerous issues, including the extraneous influences and corruption that operate on the system, besides the reluctance of the staff to take on additional load of investigational work in the midst of heavy pressure of numerous other duties. Among all such causes, the most noteworthy one which accounts for a considerable number of crimes going unregistered is the concern of the political authorities in the State Government to keep the recorded crime figures low so as to claim before the State Legislature, the public and the press that offense is well controlled and is even going down as a consequence of proper functioning of competent police authorities.

A common citizen is not conscious of this distinction made between cognizable and non-cognizable offences according to the Code of Criminal Procedure. It becomes awkward for a victim who is already in mental trauma to understand the procedure elaborated by the police authorities. Not only this, a victim is asked to wait for several hours before an FIR is recorded and even it has been observed that while she is waiting a number of officers become inquisitive and ask her inappropriate questions without any reason. Also, the norm of filing a zero FIR in cases where there is uncertainty about jurisdiction is not followed and the victim is forced to move from one police station to the other just to get her complaint reported.

2.2 Negligence in investigation on the part of police authorities conducting investigation, where FIR is registered

The methods which are opted to conduct police investigations is now of serious concern in the functioning of the Criminal Justice System. A grave failure of justice will result if the collection of evidence is vitiated by error or negligence. Moreover, successful prosecution of the offender depends on an exhaustive and vigilant search for

truth and collection of evidence which is both admissible and probative. During the process of search, it is the responsibility of the police to examine fairly and thoroughly and collect all evidence, whether for or against the suspect.

The accused consistently makes allegations against the victim's character and reputation which the police incline to accept and therefore, tries an out of court settlement between the accused and victim rather than that of investigating the case. According to police authorities, it will save the time of authorities as well as the court and save victim from further mental harassment. This becomes more often when the accused is known to the victim and crime occurs within the home or immediate neighbourhood, where the role of police is minimal. Thus, police often try to take recourse of short cut methods which display negative traits of police culture, namely, rudeness, practice of defensiveness in face of criticism, deficiency of innovativeness etc.

It is not always so that police does not express any concern for investigating sexual offences against the women or other crimes cognizable or non-cognizable, beside all above things in a cross-section of the police officers at all levels the police officers itself find it challenging to investigate accurately because of following reasons:-

1. Excessive workload due to shortage of manpower and lengthy working hours even on holidays and the lack of shift system.
2. Non co-operative approach of the public at large.
3. Lack of forensic back up support.
4. Shortage of skilled investigating personnel;
5. Insufficiency of the training amenities in investigation, principally in service training.
6. Deficiency of coordination with further sub system of the Criminal Justice System in crime prevention, control and quest for truth.
7. Distrust on the legal and judicial machinery.
8. Deficiency of laws to deal efficiently with the emerging parts of crime such as organised crime, money laundering etc.
9. Abuse of bail and anticipatory bail provisions provide under the Criminal Procedure Code.
10. Directing police for additional responsibilities which are not a part of police roles.
11. Interrupting investigation effort by being withdrawn for law and order duties in the

centre of investigation. There is also political and executive intervention.

12. Prevailing preventive laws being absolutely ineffectual in shortening criminal tendencies of hardened criminals.

2.3 Dual Victimization of the victim if she reports a complaint against sexual assault-

Victims turn to the police for support and security. Police may cause secondary victimization when they examine victims by asking indecent questions that infer that they are responsible for what happened with her or when they explicitly state to victims that their acts contributed to the rape. These allegations may include questions or statements relating to a victim's outfit, use of alcohol or drugs, the victim's purpose for being at a certain location at the time of the rape, degree of resistance, previous sexual encounters with the suspected assaulter etc.

There is no one in the whole system that raises voice for her or stands by her side. Numerous times, a victim may not desire to lodge a complaint but may wish to only get benefit of treatment in a public hospital. But most public hospitals refuse treatment unless the case is converted into a medico legal case.

Consent of the victim is not taken before she is examined both externally and internally though the law makes it mandatory, and the procedure of undressing and examination can be very embarrassing as strict privacy is not maintained. Also, she is not sent to medical examination until the FIR is logged. Even though it is obligatory to record the declaration of a child under POCSO at the residence of the victim or at a place where she is comfortable, the police insist that the victim should be took to police station and is questioned before a complaint is filed to ensure her trustworthiness.[3] Sometimes, the accused is brought face to face with the victim and he is allowed to threaten her or discourage her from lodging the complaint. Even in cases where charge-sheets are filed and charges are framed and a trial begins, the dice is often loaded against the victim.[4]

Case- Delhi Domestic Working Women's Forum v. Union of India[5]

The victims consistently found the trial of an offence of rape trial an upsetting experience. The experience of giving evidence in court has been adverse and destructive and the victims have often expressed that they considered the ordeal of facing cross-examination in the criminal trial to be even worse than the rape itself.

2.4 Insufficient information about offences related sexual harassment

There is necessity to improve the Investigative abilities of the officers. As the density and nature of crime is altering fast, training facilities in emerging disciplines such as forensic accounting and information technology etc. required to be advanced and conveyed to the Investigating Officers. It has been perceived that investigations are generally handled by lower level officers, namely, Head Constables and Assistant Sub-Inspector etc.

Also sometimes elements of the offence are not clearly brought out in the charge sheet or in the supporting documents, due to which the cases result in acquittal. At times the Investigating Officer is indifferent to the court proceedings summoned to court to give evidence. When the officials come to depose, they are not equipped with the evidences in the case and hence made mistakes which proved disadvantageous to the case.

Case- State of U.P v. Chhoteylal[6]

The Supreme Court observed that criminal justice system is not functioning in our country as it should. The criminal trials are delayed because of non-appearance of official witnesses on time and the non-availability of the amenities for recording evidence by video conferencing.

CHALLENGES DURING TRIAL OF SEXUAL OFFENCES

It is generally considered that a woman who faces sexual harassment faces two major problems i.e. the physical and mental pain caused due to offence and the subsequent trial. While the 1st extremely injures her self-esteem which lowers her sense of safety and may often cause physical devastation, the 2nd reason forces her to revive through the disturbing experience where whole paraphernalia of the criminal justice system is focused upon her.

Court trials get obstructed by a variability of reasons which are discussed as under: -

1. Miserable Prosecution System
2. Excessive Adjournments during the course of Trial
3. Witness Fabrication
4. Low Conviction Rate

1. Miserable Prosecution System

So far as the structure of prosecution is concerned, it is regularly seen that an experienced prosecutor is not engaged for placing its case before the Court from the

side of victim. The accused is usually represented by a very capable lawyer of his choice. There is a disparity as an alike competent lawyer is not there to represent the prosecution. The burden of proof being very heavy on the prosecution, it is although more essential for the prosecution to be represented by a very competent and knowledgeable lawyer. Moreover, deficiency of co-ordination between the investigation and the prosecution is another major problem. This makes things worse for the victim.

Case- Balvant Singh v. State of Bihar[7]

The Hon'ble Supreme Court has mentioned that it is the legal obligation of the public prosecutor to apply his mind and to take decision about the withdrawal of prosecution and his power is non-negotiable.

2. Excessive Adjournments during the course of Trial

Public expects and wants speedy trial and fast justice. As, it is rightly said that "**Justice delayed is Justice denied**". There are two difficulties about which everybody is worried and concerned-

- a) The first is imposition of huge number of cases in the courts about which everyone is aware of that they cannot be dealt with within a considerable period of time so that justice may be imparted on time. This leads to the Court wasting considerable time in calling the cases.
- b) The second problem is related to regular adjournments. This problem is enrooted in the functioning of the courts, mainly in the trial courts because of granting of numerous adjournments, generally on insubstantial basis.

3. Witness Fabrication-

Witness is a significant component in the management of justice. By giving evidence relating to the commission of the offence, he performs his responsibility of supporting the court to determine truth.

Another main problem is about security of witnesses and their family members who face risk at different stages. They are often endangered and the gravity of the threat depends upon the type of the case and the background of the accused and his family. Several times vital witnesses are threatened or injured prior to their appearing in the court. If the witness is still not agreeable, he may even be murdered. In such circumstances, the witness will not come forward to give evidence unless he is guaranteed of security.

There is a growing tendency of subjecting the witness and his family members to serious threats to life, abduction or raping, or damaging the witness's property or harming his image and interest in other ways. The witness has no protection whatsoever. Many countries in the world have enacted laws for witnesses' protection. There is no such law in India.

Case- Sakshi v. Union of India[8]

The Supreme Court mentioned that where a child witness is concerned, the questions have to be given in writing to the judge, who in turn should put them to the child witness. Instead, the child witness is forced to face extensive cross examination by defence lawyers and asked to come to court numerous times to give evidence.

But despite of guidelines issued by Hon'ble Supreme Court, sometimes the child is uncertainly placed in the witness box in order for the judge to be able to see and hear the answers given by the child. This tends to disrupt the basic dignity of the child witness.

Case- Unnao Rape Case, 2017[9]

The *Unnao rape case* denotes the gang rape of a 17 year old girl on 4 June, 2017 in *Unnao, Uttar Pradesh*, India. The charge sheet was filed by the Central Bureau of Investigation on 11 July 2018 against *Sengar*, who was a former BJP leader and Member of the Legislative Assembly from Uttar Pradesh. On 16 December 2019, *Sengar* was convicted for the rape. On 20 December, 2019, he was sentenced to life imprisonment by Delhi court and fined Rs. 25 lakh from which Rs 15 lakhs will be paid to the state government to meet the trial and prosecution expenses. Afterwards, in March, 2020, *Sengar* was found guilty of culpable homicide and criminal conspiracy in her father's death.

4. Low Conviction Rate

The chief purpose of the criminal trial is to regulate whether an accused has dishonoured the penal law and if found guilty then to recommend the suitable punishment. Prosecution is an executive function of the state and is generally performed through the prosecutor. The burden of proof lies on the prosecution according to legal norms. The prosecutor faces numerous difficulties in proving the guilt of the accused. Some of these difficulties are beyond the space of his obligations and responsibilities.

There is urgent necessity to bring major development in the condition when the conviction rate is steadily falling over the years in the country. Following aspects are responsible for low conviction rate in the country:-

1. The conviction rate is mostly affected by the quality of investigation. Deficiency of evidence

due to poor investigation and the standard of proof set by law to refer the case to trial.

2. Poor Prosecution is due to want of harmonisation between the investigator and prosecutor.
3. The tendency of offenders to plead guilty also has a noteworthy bearing on the conviction rate. This is completely out of row.
4. The current level of use of forensic science in crime investigation is some-what low in the country, with only 5-6% of the recorded crime cases being referred to the FSLs and Finger Print Bureau put together.
5. Witness turning hostile. It may be due to risk from other side and at the family members themselves forces the victim not to give evidence, particularly when the accused is a family member, close relative or a dominant person in the community.
6. Judges do not provide judgment for years. As a consequence, the Judge may disremember vital characteristics of the case which results in miscarriage of justice. Also, the Judgments are not promptly signed after they are typed and read causing excessive adversity to the parties.

Case- Ravji v. State of Rajasthan[10]

The Supreme Court observed that it is the seriousness of the crime but not the criminal, which are relevant for consideration of suitable punishment in a criminal trial. The court will be failing in its responsibility if suitable punishment is not awarded for a crime which has been committed not only against the victim but also against the society to which the criminal and victim belong.

CONCLUSION

The sex related offences are now become a universal problem faced frequently by women, which take place in every type of society. Sexual offences take the form of sexual violence, which at times cause severe and permanent injury to the physical and mental fitness of the victim. Physical injury includes an increased danger of a variety of sexual and reproductive health difficulties. Its influence on mental health can be similarly grave as that of physical injury. Sexual offences, when they assume the form of sexual violence may lead to murder, suicide, depression, etc. of victims. It completely interrupts the social comfort of the victims because of stigmatization and the substantial loss of position in their families and the neighborhood. The foremost thrust of this research work is to understand the phenomenon of sex related offences in terms of

forces operative in the process of their perpetration, their magnitude and prevalence, and their prevention and control measures along with the reasons for negligence in implementation of laws.

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