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A GIRL MORE RESPONSIBLE FOR RAPE THAN A BOY?

By Muskan Dahiya And Rahul

ABSTRACT

Rape is an odious crime which is still prevailing in our society. Even after many protests, passing new laws, nothing has changed the situation so far. According to the National Crime Bureau 2018 annual report 33,356 rape cases were reported in India. There are still many cases of rape which goes unreported. Many people are ashamed to report a rape crime as they are mistreated by the police and thus they remain silent. People are worried about their reputation in society being devastated as many rapes are done by their own and family members and relatives. Cases not being reported also encourage the rapists to continue the crime as they are not punished for their act. Rape is a sexual assault involving a sexual intercourse without a person's consent. Rape not just harms a girl physically but also ruins her mental and emotional state of mind. In our society a female is blamed for being raped. A female is not allowed to go out alone at night, she should dress simply, and she should not go out to bars and clubs and if she don't follow these rules then she is held responsible for all the repercussions. Even minor girls are raped. In India about one in four is convicted for rape.

The entire research work will run into five chapters. The first one on Introduction brings out the definition of Rape in IPC, the Nirbhaya Rape Case. It also includes the changes made in law after the Nirbhaya Rape Case. Chapter II will contain the condition of the victim and under what situation they are raped followed by Chapter III which is the conclusion of the whole research paper.

CHAPTER I

In every 15 minutes a rape case is reported in India. Rape is the most common crime committed in India.

Section 375 of the Indian Penal Code defines Rape. A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

- 1) Against her will.
- 2) Without her consent.
- 3) With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
- 4) 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.
- 5) 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, she is unable to understand the nature and consequences of that to which she gives consent.
- 6) With or without her consent, when she is under sixteen years of age.

Section 375 also has an exception that if there is a sexual intercourse by a man with his own wife, the wife not being under fifteen years of age then it is not considered as rape.

Section 376 of the India Penal Code states the punishment for rape:-

Whoever, commits rape shall be punished with imprisonment 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 for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons impose a sentence of imprisonment for a term of less than seven years:-

Whoever:-

(a) Being a police officer commits rape within the limits of the police station to which he is appointed or in the premises of any station house whether or not situated in the police station to

which he is appointed; or on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Rape is a sexual assault which involves a sexual intercourse against a person without her consent by using physical force, coercion, abuse of authority, against a person who is incapable of giving her consent. The main key to the definition of rape is the consent.

India is a country which is unsafe for the females. Discrimination against women still continues. Females are still deprived of their basic rights. Rape is the fourth common crime against women in India. The 2012 Delhi Gang Rape Case also known as the nirbhaya case which shocked the entire nation. A brutal incident happened which shocked the entire nation.

On 16 December 2012 in Munirka, Delhi a girl with her male friend boarded into a private bus at night to go home. Inside the moving bus the girl was raped and was assaulted by six people including the driver. All six people brutally assaulted her with iron rod which ripped her

intestines apart and raped her several times in the moving bus. After raping her they left the girl and her friend to die on the roadside.

She faced severe organ failures. Eleven days after her rape, she was sent to Singapore for emergency treatment but she couldn't survive and died after two days.

All the accused were arrested. One of them was a minor; he was convicted of rape and murder and was given three years of imprisonment. One accused committed suicide in the police custody. Other accused were put on a fast-track court trial. The remaining people were sentenced to death by hanging.

This case gathered national as well as international attention. Many people protested, candle marches were held against the Indian Government about the rape incident. Many people signed the online petitions. Many human right activists and social activists joined the protest.

People demanded for a quick and strict punishment for the rapists. The rapists were sentenced to death by the Delhi High Court in 2013 but and on 20 March 2020 all the convicts were hanged at Tihar Jail.

Many people blamed the victim by saying that the women who are out at night are themselves responsible for such incidents. Decent girls don't stay out of their house at night. The girl must be wearing inappropriate clothes. One of the convict of the Delhi Gang Rape Case also believed that the victim was assaulted because "they wanted to teach her a lesson" because she was out late night with a male friend. Many people believed that women's clothes and behavior provoke men and that's the reason for their rape.

Not only women but many minor girls are also being raped. India is a country where female goddesses are worshiped and on the other hand the brutality against women is rising. In a patriarchal society it is assumed that the female victim must have behaved in a way which encouraged the assault against her. In every 15 minutes a rape case is reported in India.

On 17 January 2018, an 8-year old minor girl Asifa was raped and murdered near Kathua in Jammu and Kashmir. Charges were filed against eight men in April 2018. This incident made national news.

Though our constitution provides a right to equality to every citizen but still females are suppressed. There are many girls who don't even report a rape case because of their family

reputation. At many instances the girls are threatened to not to disclose that they are raped by their own family members.

An intercourse between a man and his wife without obtaining the consent of his own wife, by force, threat, and physical violence, mental and emotional torture is considered as a marital rape.

India is 1 of 36 countries which have not criminalized marital rape. Marital rape is a very big problem in India and it is still not a criminal offence under the Indian Penal Code. According to section 375 of the Indian Penal Code forced sex in marriage is a crime only when the wife is below 15 years of age. If physical violence is a crime then sexual violence should also be considered as a crime. Only a civil remedy for marital rape has been given under the Protection of Women from Domestic Violence Act 2005. The PWDVA came into force in 2006.

People believe that marital rape cases would destroy the prestigious institution of marriage, but there should be no institution above an individual's dignity. Marital rape is an infringement of the fundamental rights. But the government is of the view that marital rape should not be criminalized because there would be huge number of fraudulent cases that may be filed against husbands.

In many instances husband has a right to have sexual intercourse with her wife, even if her wife is willing or not, she still has to surrender to his husband against her will and desire.

Women are still treated as the property of their husband. Their husbands have all the rights to exploit them according to their desires and no remedies have been provided. A husband's violent act against his wife may bring action for criminal assault, but the principal of liability for marital rape is not present. Judiciary should take certain strong initiatives to safeguard women.

After the nirbhaya gang rape case, the rape laws were amended. The Criminal Law (Amendment) Bill, 2013 came into force on 3rd February, 2013. New offences like, acid attack, sexual harassment, stalking were incorporated into the Indian Penal Code.

Section 370 of Indian Penal Code (IPC) was exchanged with new sections, 370 and 370A which deals with the trafficking of exploited person. If a person is recruited, transported, harboured, transferred, or received, a person, by using threat, force, coercion, abduction, fraud, deception, abuse of power, or inducement for exploitation including prostitution, slavery, forced organ removal, etc. will be punished with imprisonment ranging from at least 7 years to imprisonment

for the remaining of that person's natural life depending on the number or category of persons trafficked. Employment of a trafficked person would have penal provisions.

Definition of rape under IPC was also changed. In the Act the word 'rape' was kept in Section 375, and was expanded to include acts in addition to vaginal penetration. The definition was broadly defined with acts like penetration of penis into the vagina, urethra, anus or mouth; or any object or any part of body to any extent, into the vagina, urethra or anus of another woman or making another person do so; to apply mouth or touching private parts constitutes the offence of sexual assault. This section also simplified that penetration means "penetration to any extent", and lack of physical resistance is immaterial for constituting an offence. The punishment for the offence was decided to be imprisonment not less than seven years which may extend to imprisonment for life, and shall also be liable to fine.

A new section, 376A was added which declares that if a person committing the offence of sexual assault, "inflicts an injury which causes the death of the person or causes the person to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean the remaining of that person's natural life, or with death."

The age of consent in India was also increased to 18 years, which means that any sexual activity irrespective of presence of consent with a woman below the age of 18 will be termed as a statutory rape.

In Cr.P.C. and Evidence Act many changes were introduced such as the process of recording the statement of the victim was made more victim friendly and easy and the 'character of the victim' was now exhibited totally irrelevant, and there would now be a presumption of 'no consent' in a case where sexual intercourse is proved and the victim states in the court that the victim did not consent.

But the new amended laws were severely criticized for being biased against men and giving women the legal authority to do the same crime against women to commit exactly the same crimes (against which they seek protection) against men with an exception from punishment.

The Criminal Law (Amendment) Ordinance, 2013 was criticized by many human rights and women's rights organizations for not including certain areas such as the marital rape, reduction of age of consent.

CHAPTER II

Rape is a very distressing experience that affects the victim physically, psychologically, and sociologically as well. The victim may start to self-blame herself that she must have done something wrong which has led to her rape. They start feeling shame in front of the society. They lack motivation in themselves and isolate themselves completely. Many victims get into depression and carry a feeling of guilt in them. Many women also try to attempt suicide so that they don't feel shamed in the society, and the narrow-minded society disowns them. The victims feel embarrassed to talk about their incidents. After rape the victims undergo through many medical investigations which are even interviewed by police and thus the victim feels a loss of her privacy. Many victims go through mistreatment.

It is very common to feel isolated and disconnected from other people after a sexual assault. Victim may feel to withdraw her from the social activities. Rape survivors should be supported from other people as it is vital their recovery. The rape survivors should indulge themselves **in social activities**. They should do normal things with other people; they should try to reconnect with their friends. Healing from this trauma is an ongoing process. The harsh memories of this incident cannot be disappeared completely but the victim should try to not to think about the incident.

Rape is the most horrifying and brutal act of violating bodily integrity and honor of a woman. It destroys the entire physical and mental state and pushes the victim in a deep emotional crisis and reduces her to a living corpse. It is a crime against the basic human rights and a clear violation of the right to life with dignity.

The World Health Organization has stated many factors which led to the sexual violence against women, including rape, i.e. people beliefs in the family honor and sexual purity, weak legal punishment for sexual offence, delayed judgment, male dominance.

Factors such as anger, power, viciousness, sexual satisfaction result in rapes. Some men have a desire to dominate and control women, they are more impulsive, disinherited, anti-social, hyper masculine, and less empathic towards others.

Sexual aggression is mostly considered a masculine characteristic of manhood in some males. Many people think gang rape is a justified way of discouraging and punishing the females for an immoral behavior according to them.

Many people in India think that beating their wives is justified and many women also believe that they are responsible for the beating of their husbands on them. Many boys start showing aggressive behavior towards females by noticing their family members assaulting women.

Women are not safe in India not even inside their homes. Countries public places are not even safe for women. There is a lack of women's toilets, streets are poorly lit. The women, who smoke, drink, go to party at nights, and are seen as morally loose. On the other hand if a man does all these things, he would be appreciated and it would be normal for everyone.

In many small villages the victim is forced to get married to the attacker who raped her. The victim is told to compromise and to draw all the charges against the attacker. By these compromises the peace is maintained between the families and the families are saved from shame.

In India it is very difficult to get quick justice. And because of the delayed justice many women don't even report a rape case. And the rape cases which are reported, does not ensure the victim that the attacker would get convicted for his act. India's conviction rate is not more than 26%. Also the biggest issue in India is that the women are given a low status as compared to men.

In most of the rape cases, women are raped by their known including their neighbor and family. There is a very small proportion of people who report rape case because of the stigma attached to it of shame. It was seen that between the year 2006- 2010 more than 2, 11,200 rape and sexual cases were not even reported to the police because there were no physical injury on the body of

the victim, there was involvement of alcohol. Women generally are hesitant to report rape case because of the humiliation.

There is a lot of mistreatment done by the police at the time of reporting a rape case. The victim is send to the government hospital for her medical examination where they are asked to do certain tests with which many of them may not be comfortable. Many victims are told to wait in their bloodied clothes for hours and are not allowed to shower till their investigation is not completed. There is no proper treatment of the injuries to the victim. In many cases no counseling is given to the victim for the trauma caused to them.

According to the latest government data released on September 29, 2020 India recorded an average of 87 rape cases daily in 2019 and overall 4,05,861 cases of crime against women during the year, there was a rise of over 7% from 2018.

According to the latest National Crime Records Bureau (NCRB) data every fourth rape victim across the country in 2018 was a minor girl whereas more than 50 per cent of them were in the age group of 18 to 30 years. The NCRB data also revealed that the rate of crimes against women has increased from 58.8 in 2018 to 62.4 in 2019. There were 32,033 incidents of rape reported in 2019, and the highest crime rate for rape was the reported in Rajasthan, where 5,997 rapes were reported in 2019.

Though gender-based discrimination against women and girls is prevalent in developing countries but India is one of the worst offender. Female discrimination in India starts in the womb and continues throughout a woman's lives.

A main reason for the poor investigation and prosecution of a rape crime is because of the power structure which is deeply patriarchal. Several recent cases support this.

Girls don't have to change themselves it is the mindset of people that has to be changed. There is an urgent need to educate people so that women in our society can feel safe. India needs more fast-track courts. The investigation needs to be fast-tracked. The survivors and their families should not relive the trauma over and over again as they wait for justice. Rape, sexual assault and murder are heinous crimes and have a long-lasting impact of physical, emotional and mental health. The justice system must be quick to respond and help them find closure.

The four convicts in the 2012 Nirbhaya gang-rape and murder case were hanged to death at Tihar jail on March 20, 2020. It took 7 years for justice to be delivered. Post 2012 rape case, several measures were adopted to avoid recurrence of such crimes in the country but till date there are many rapes going on. There are plenty of rapists which are roaming freely and have no fear to be punished on the other hand the victims feel completely shattered.

Even though several Apps have been launched and measures have been adopted to provide justice, but these are not enough. It is very important to recognize the main cause of the crime, which is lack of awareness, and an unsystematic and time taking legal and judicial work for handling rape cases. Because of lack of awareness, a rape victim goes to the police station where victimization generally takes place, which further increases her pain and trauma.

The Nirbhaya fund was set up in 2013 by the Union Budget to support and protect the dignity and to ensure the safety of women in India. CCTV cameras continue to be the preferred solution to deter attacks and identify the culprits, but this cannot be the only solution for women's safety.

Most women are reluctant to report their incidents officially to the police. Because of the socio-cultural taboos attached with such incidents, many women are hesitant to speak about it, and in several cases women are stopped from reporting officially by their own families because according to them it is dis honour to themselves and their families. Thus, the official statistics do not reflect the true nature and size of the problem which further leads to the ineffective policies and investments.

One Stop Crisis Centers are up and running in various cities of India to provide services for violence against women, which includes police facilitation, legal counseling, psycho-social counseling, medical aid and temporary shelter in an integrated manner, all under one roof. But not many people are aware of their centers and where they are located. These centers should be advertised and further, a proper inspection needs to be done at regular intervals to ensure they deliver the quality services as promised.

CHAPTER III

In the end I would like to conclude this whole research paper as India is a patriarchal nation. Women are termed as a weak section of the nation; they are discriminated in every aspect of life. An independent woman with a bold nature is still not considered as a decent behavior in India by many people. Most of the narrow minded men believe the girls in western clothes and who follow western lifestyle are immoral, and these girls can be harassed because they are asking for it themselves and they want to be raped. Everyone should deserve the freedom to wear what they like, to go out at night, without worrying punished for doing such things with rape. Raping a girl when she is unconscious does not give any men the permission to rape her.

Rape victims are never responsible for their attacks, no matter how much alcohol they consume. In India a minor of 3,4 years to an old lady of 70 years is raped. Rape is not at all a lifestyle issue. It is a problem of the narrow minded people. Women in sarees, suits and burqa's are also raped.

More awareness programs should be run in the rural parts of India as well as in every schools boys should be taught to give equal importance to women in a society and to raise voice against the injustice with women and not to have a violent behavior against them.

Though these frequent rape cases anger many individuals and they are demanding a capital punishment for the rapists. On December 6 in the Hyderabad Rape Case the police shot all the rapists, many Indians applauded their act and were happy with the sudden justice delivered to the victim. People celebrated their killings. Although the rape punishment is strict but the justice delivered is very slow.

Rape is a non-bailable offence, but many accused get bail because there is a lack of evidence and many accused being sheltered by big politicians, police officers. Indian way of investigation is very basic and of very poor quality. Investigations are mostly mismanaged. A crime scene is not really protected; investigators at times don't know how to collect the evidences. Many rapists kill the victim after raping her to hide all the evidence. Cases have been reported where the victims were burned alive, murdered.

Many people don't even report a rape case because of the length of the trials. Cases are often dropped in between; the victims often feel that they are unable to spend their time and money on the court hearings. Outside the court a settlement is made between the victim and the accused.

The victim's family is pressurized and the victim is forced to marry the rapist. These rapists don't get punished for their crime. They are free to pose a risk to others in the community.

People rape because they might have some adverse childhood experience, attachment, personality disorder, social environment, peer group, gender inequitable masculinities, and substance abuse. Rape not only impacts the victim but to the whole society. Victim's family is

as a result of the crime. The government should increase the conviction rate in the rape cases and should ensure that the complaints get registered soon. The police officials should get a proper training and education for good investigation and interrogation techniques. The quality, methods, procedure of the investigation, especially considering psychological trauma to the victim should be maintained. The justice should be delivered in a timely.

The victim should be provided both legal and psychological help like personal therapies, attention, and representation services to be made available to the victim from dedicated, professionally trained caseworkers. There should be proper measures to ensure that the victim and her family are not disgraced. Victim support centers and other support groups should be established where the victims can be provided comfort. Medical staff should be given a specific training relating to rape cases and regular updates for the same should be given. Medical programs should be set up to address both short and long term needs of the victims and their families. The most important change should be that the medical examinations to be made as sensitive as possible to the mental and physical conditions of the victim.

Awareness should be built by introducing sex education course in schools without politicizing the issue. Involving schools and universities in running awareness campaigns, victim help projects, sensitization campaigns, workshops etc. at grassroots-level would really make a change in people. Workshops should be organized on sex education for teachers and parents. Training workshops for local women leaders on human rights and legal rights should be organised which would support them to further organize such workshops at the grassroots. The media should also start massive media campaigns which should focus on the re-interpreting of masculinity in the role of a 'protective ally'.

Awareness regarding the rights granted to women and the services open for women if such a crime occurs should be taught. In schools the girls should be given basic self defense training so

that if any girl faces such kind of problem she could at least escape from such a situation and save her life. Men should be taught to not to treat women's as objects and not to judge any women according to her lifestyle. Wearing western clothes couldn't be a reason to rape a girl.

